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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2026

CORAM

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

CMA (TM)No.21 of 2025

and CMP.No.32352 of 2025

Ganesh Consumer Products Ltd.,
(Previously known as Ganesh Grains Ltd.) Rep. by
its authorised signatory, Narendra Mishra, having
Reg. office at 88, Burtolla Street, Kolkata, West
Bengal -700 007. Also having corporate office at 83,
Topsia Road (South), Trinity Towers, 3rd Floor,
Kolkata, West Bengal – 700 046.

(Substituted Narendra Mishra
Cause title amended vide Court order dated
20.11.2025 made in CMP.No.29055 of 2025 in
CMA(TM)No.21 of 2025 by NSJ)

.. Appellant

Vs

- 1.Assistant Registrar of Trademarks and G.I.
Trademark Registry, SIDCO Industrial Estate,
Anna Salai, Guindy Industrial Estate, Guindy,
Chennai – 600 032.
2. K.R. Nagendra
Partner of the Partnership Firm trading as
Shankar Industries, Santhepet, Arsikere,
Karnataka – 573 103.



3. K.N. Shobha

Partner of the Partnership Firm

Trading as Shankar Industries, Santhepet,
Arsikere, Karnataka – 573 103.

..Respondents

Prayer: Civil Miscellaneous Appeal (Trade Mark) is filed under Section 91 of the Trade Marks Act, 1999, (a) to allow the present appeal, (b) call for all records pertaining to the application for the impugned Mark No.1831646 filed by the second respondent and the third respondent and available with the first respondent and (c) set aside the impugned order dated 11.09.2024 passed by learned Registrar, Trade Marks Registry, Chennai, granting registration to the impugned mark



bearing No.1831646 in Class 30 to the second respondent and the third respondent (Partners of Shankar Industries); and (d) Consequentially, direct the first respondent to revoke the impugned mark



bearing No.1831646 in Class 30 in the names of the second respondent and third respondent (Partners of Shankar Industries), and remove the corresponding entries in the Trade Mark Register.

For Appellant: Mr. Adarsh Ramanujan

For Respondents: Mr. S.Jerome, CGSC for R1

Mr. R.Sathish Kumar for R2 & R3

JUDGMENT

The appellant was the opponent before the Registrar of Trade Marks in relation to an application filed by the second and third respondents for registration of the following device mark:



Such opposition was rejected by order dated 11.09.2024, which is impugned herein, and the above mark was registered as Trade Mark No. 1831646 in Class 30.



2. The contentions of learned counsel for the appellant, Mr.Adarsh

Ramanujan, may be summarised as under:

(i) The second and third respondents failed to establish the user claim in respect of Trade Mark No.1831646. The partnership deed filed by said respondents evidences that the partnership firm under the name and style of ‘Shankar Industries’ was set up in 1992. It does not qualify as evidence of use of the trade mark since 1992. The certificate of the Chartered Accountants also does not qualify as evidence of use of the trade mark. The certificate does not refer to or enclose the underlying documents on the basis of which such certificate was issued. The Chartered Accountants have failed to even affirm an affidavit in respect of the alleged sales turnover and advertisement expenses mentioned in the certificate. The second and third respondents also failed to file invoices evidencing sale from 1995 – 1996, which is the first financial year for which turnover details are set out in the certificate. The invoices filed by the second and third respondents do not contain any evidence of use of the registered device mark. The earliest of these invoices is from the year 2002.

(ii) The impugned order records that the appellant had adduced evidence of use since 1992. Therefore, the appellant’s use clearly pre-dates use by the second and third respondents.



(iii) The onus was on the second and third respondents to establish that their use was honest and concurrent. The judgment of the Bombay High Court in *Kores (India) Limited v. M/s Khoday Eshwarsa & Son and another, 1984 SCC OnLine Bom 65*, particularly paragraphs 13 to 19 and 23, is relied upon in support of the requirements of Section 12 of the Trade Marks Act, 1999 (the TM Act). The impugned order made reference to the Chartered Accountants' certificate and a certificate issued by Sales Tax authorities and the Small Scale Industries Department and recorded a finding that the second and third respondents are entitled to the benefit of Section 12 of the TM Act. Said conclusion is not supported by cogent reasons.

(iv) The conclusion in the impugned order that there is a vast difference between the appellant's mark and that of the second and third respondents is not supported by reasons. No effort was made by the first respondent to compare the marks of the appellant with those of the second and third respondents before drawing such conclusion.

(v) Even without considering the fact that the appellant applies the mark in relation to atta, by drawing reference to the *Nandhini Deluxe* case, an erroneous conclusion has been recorded that the proprietor of a trade mark cannot enjoy monopoly over the entire class of goods.



(vi) The registration of Trade Mark No.460314 by the second and third respondents does not qualify as evidence of use of Trade Mark No.1831646. Even the withdrawal of the rectification petition relating thereto does not disentitle the appellant from challenging the registration of Trade Mark No.1831646.

(vii) The additional documents fall within two or three categories. The newspaper advertisements relate to use of the trade mark by the predecessor in interest of the appellant since 1936. Several documents relate to registrations obtained either by the appellant or the appellant's predecessor in interest in relation to marks forming the basis of the opposition and the present appeal. All these marks were referred to in the evidence in support of the opposition before the Registrar of Trade Marks. Because some of the marks were assigned to the appellant, the relevant assignment deeds have been filed. The Registrar of Trade Marks had access to all these documents and should have referred to the same while deciding the issue relating to deceptive similarity. Therefore, the additional documents are liable to be admitted in evidence for purposes of the appeal.

3. The contentions of learned counsel for the second and third respondents, Mr. R.Sathish Kumar, may be summarised as under:



(i) The notice of opposition was lodged on 04-02-2013 by asserting that the appellant is the registered proprietor of several trade marks containing the element GANESH. The appellant has sought permission to file two deeds of Assignment executed shortly thereafter on 19-02-2013 and 16-05-2013. Although the appellant filed evidence in support of the opposition on 05.12.2013, no reference was made to these assignment deeds therein.

(ii) The second and third respondents obtained registration of Trade Mark No.460314 with effect from 17-09-1986 by asserting user from 01-01-1978. The rectification petition filed by the appellant in relation thereto was withdrawn without obtaining leave to initiate fresh proceedings.

(iii) The appellant was not the registered proprietor of most of the trade marks containing the element GANESH at the time of filing the notice of opposition. Form TM-P was filed in the year 2021 in respect of one of the marks. Even as on date, it is unclear as to whether the assignment has been registered in the name of the appellant.

(iv) The only difference between Trade Mark No.460314 and Trade Mark No.1831646 is the absence of the pictorial device of Lord GANESH. Therefore, the second and third respondents are entitled to be recognized as honest and concurrent users, including on the basis of the earlier registration.



4. The contentions of Mr.Adarsh Ramanujan in rejoinder may be summarised as under:

(i) Even without taking the additional documents into account, there is no evidence of honest and concurrent use.

(ii) The second and third respondents did not challenge the title of the appellant in course of proceedings before the Registrar of Trade Marks or even in proceedings before this court.

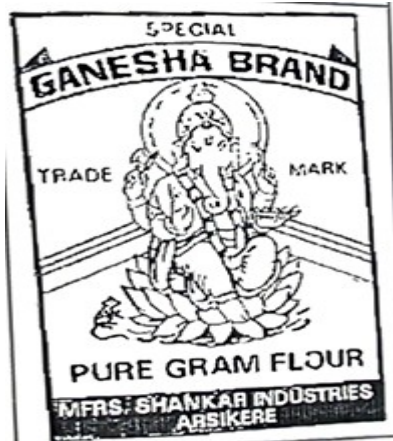
(iii) The assignments in relation to the marks forming the basis for the opposition and appeal have been registered in the name of the appellant subsequently. This statement is made on the basis of instructions received from the instructing counsel.

5. Upon considering the rival contentions, the broad question that falls for consideration is whether interference with the impugned order is warranted. The impugned order refers to the evidence filed by the appellant in support of the opposition. Such evidence was in the form of Annexures A to E to the affidavit in support of the opposition, which was filed on 05.12.2013. With regard to Annexure A, it was recorded that it contains details of advertisement expenses from 1973 to 2010 without mentioning the details of the marks for which the expenses were incurred. As regards the period from 2010 to 2013, it is recorded that details of the mark were provided. The impugned order also refers to



Annexure B (containing sales invoices from 14.06.1992 to 08.05.2013), the ISO certificate dated 23.09.2013 and Nelson report from 2010 to 2012.

6. As regards the evidence in support of the application, reference was made in the impugned order to Trade Mark No.460314 for the following mark:



It is also recorded therein that the user claim in respect thereof is from 01.01.1978 and that the mark was registered on 13.11.1992 with the validity thereof being extended up to 17.09.2027. Thereafter, the Chartered Accountants' certificate, CST certificate and Small Scale Industry certificate were taken note of.

7. The certificate issued by the Chartered Accountants records as under:

“THIS IS TO CERTIFY that M/s. SHANKAR INDUSTRIES, SANTHEPET, ARSIKERE – 573103, South India, Subjects of the Indian Republic, have effected turnover and incurred advertisement expenses for their trade mark ‘GANESHA’ in respect of GRAM FLOUR as given below:”



In the annexure thereto, annual turnover and advertisement expenses from financial year 1995-96 to financial year 2012-13 are mentioned. There is a note below to the effect that sales turnover of gram flour during the period 1978 - 1995 was not traceable since the records are destroyed.

8. Learned counsel for the appellant contended that this certificate does not qualify as evidence of use of the mark on account of the second and third respondents failing to provide the documents forming the basis for the figures entered in the certificate. He also contended that the chartered accountants had not affirmed an affidavit. While considering this objection, it should not be lost sight of that the Registrar of Trade Marks does not conduct a trial and that the Evidence Act, 1872, including its current avatar, is not binding on the Registrar of Trade Marks. The appellant also did not raise any objection on this ground in course of proceedings before the Registrar of Trade Marks. Considering all these aspects, including the specific reference in the certificate to the turnover and advertisement expenses being in relation to the application of the trade mark GANESHA in respect of gram flour, I conclude that this certificate may be relied upon as evidence of use.

9. The earlier registration of Trade Mark No. 460314 was reckoned in the impugned order, and it was recorded as under:



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“Furthermore, the fact remains that the Application no.460314 for the mark is registered and the same was valid till 17/09/2027. Hence, the Registration of the Impugned mark will not make any impact on the Opponents mark and business.”

10. In effect, the Registrar has noticed that the second and third respondents had earlier obtained registration for a trade mark consisting of the word elements “SPECIAL GANESHA, BRAND” and a pictorial device of Lord GANESH. As discussed above, it was also recorded that such registration was obtained by asserting use since 01.01.1978. Said registration was granted with effect from 17.09.1986, i.e. the date of said application. The agreed position between the contesting parties is that the rectification petition challenging this registration was withdrawn by the appellant without obtaining leave to refile.

11. As regards Trade Mark No.1831646, the Chartered Accountants' certificate containing turnover details from financial years 1995 - 1996 to 2012-2103 was taken into account. The appellant's evidence of use in the form of sales invoices from 14-06-1992 was also taken into account.

12. Having taken the above evidence into account, Section 12 of the TM Act was pressed into service. Section 12 reads as under:



“Section. 12. Registration in the case of honest

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concurrent use, etc. - ***In the case of honest concurrent use or of other special circumstances which in the opinion of the Registrar, make it proper so to do, he may permit the registration by more than one proprietor of **the trade marks which are identical or similar** (whether any such trade mark is already registered or not) in respect of the same or similar goods or services, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.***”(emphasis added)

It is evident from the text of Section 12 that a person applying for registration may claim the benefit of Section 12 not only if such person qualifies as an honest and concurrent user but also if there are other special circumstances, which, in the opinion of the Registrar, make it proper to permit registration by a later applicant of a mark which is identical or similar to marks already registered or not in respect of the same or similar goods or services.

13. As discussed earlier, the appellant has filed a large number of additional documents along with an application for permission to rely thereon. These include advertisements purportedly published in the year 1936 by



Mr.Ram Ratan. There is no pleading linking the appellant with the said person.

Moreover, the pleading of the appellant before the Registrar of Trade Marks is that the appellant has used the marks since 1950. Therefore, being beyond the scope of pleadings, these documents cannot be admitted in evidence. As regards the other documents, they relate to registrations or status of marks in the name of the alleged predecessor in interest of the appellant or the appellant and include assignment agreements.

14. None of these documents constitute evidence of use of the relevant mark by the appellant since 1950. Thus, as regards use, the evidence adduced by the appellant shows use since 1992 and the evidence adduced by the second and third respondents shows use of Trade Mark No.1831646 from 1995 - 1996. The second and third respondents have also placed on record evidence that Trade Mark No.460314 in respect of a similar mark (extracted at paragraph 6 of this order) was granted with effect from 17-09-1986 on a user claim from 01-01-1978. The rectification petition relating thereto was withdrawn by the appellant without leave to re-file.

15. The application for registration of Trade Mark No.1831646 was filed on 22.06.2009 and, consequently, the registration took effect on said date. Both Trade Mark No. 1831646 and Trade Mark No.460314 were granted subject to



the limitation that the mark shall be applied to goods sold in Karnataka only.

Many of the registrations granted to the appellant or its alleged predecessor-in-interest are subject to the limitation that the relevant mark be applied to goods only within the State of West Bengal. Although this aspect was not expressly considered in the impugned order, in my view, on this additional ground also, the second and third respondents are entitled to the protection of Section 12 of the TM Act. Because of this conclusion and the scope of protection under Section 12, it is unnecessary to consider other findings in the impugned order, such as the finding on the rival marks not being similar. Consequently, even if the documents filed by the appellant at this juncture were to be taken into account, no case is made out to set aside the order impugned herein.

16. For reasons aforesaid, the appeal fails and is hereby dismissed without any order as to costs. Consequently, connected miscellaneous petition is closed.

15-04-2026

Index ; Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

Assistant Registrar of Trademarks and G.I.
Trademark Registry, SIDCO Industrial Estate,
Anna Salai, Guindy Industrial Estate,
Guindy, Chennai – 600 032.

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and CMP.No.32352 of 2022





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SENTHILKUMAR RAMAMOORTHY, J.

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