



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-01-2026

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THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

A No. 2835 of 2025

and A.No.267 of 2026

in C.S.(Comm.Div.) No.100 of 2025

1. Ashique Export P Ltd

Touchstone Apartment , No 10 New No 25 ,
Vasu Street , Kilpauk , Chennai And Also At ,
Sbp 1/432 M Poothicaud 673592 , Poomala
Post , Wayanad Dist , Kerala

2. M S Thai Impex P Ltd

2/31d , 2/32 , 2/27-31 Singikulam Post ,
Nanguneri T K , Thirunelvell

..Applicant(s)

Vs

M S Varakar Speciality

Aravinda Lochanar Complex, 149 V.C.T.V. Road,
Sathy Road, Erode, Tamil Nadu- 638 003 rep by its
Partner Ms. C.V.N. Anushasri

..Respondent(s)



Prayer in A.No.2835 of 2025: To reject the Complaint in C.S.(Comm.Div) No.100 of 2025.

Prayer in A.No.267 of 2026: To revoke the leave to sue granted on 09.04.2025 vide A.No.1839 of 2025.

For Applicant(s): Mr.Perumbulavil Radhakrishnan

For Respondent(s): Mr.Arun C.Mohan

ORDER

The suit was presented in mid April 2025 seeking remedies in respect of alleged passing off by use of the impugned mark / label Vi-WASH by alleging that the same is deceptively similar to the plaintiff's mark VIVAASH. The first defendant filed a detailed written statement in July 2025. The second defendant filed a written statement adopting the written statement of the first defendant in entirety. This written statement was also filed in July 2025.

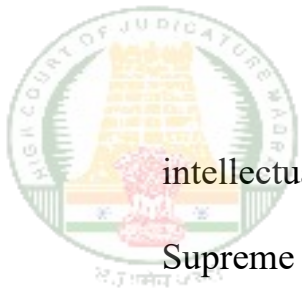
2. These applications for rejection of complaint and revocation of leave were filed in April 2025 and January 2026, respectively.



3. Learned counsel for the applicants / defendants submits that products bearing the impugned mark are not being sold within the jurisdiction of this Court. He submits that the applicants were unaware that leave to sue had been obtained until recently. He also points out that the written statement of the first defendant contains an objection to the exercise of jurisdiction at pages 7 and 8 thereof. He also submits that the plaintiff was required to resort to pre institution mediation before filing the suit and the suit does not contemplate urgent interim relief.

4. In response, learned counsel for the plaintiff submits that leave to sue was applied for and obtained in respect of the second defendant under order dated 09.04.2025 in A.No.1839 of 2025. In view thereof, he submits that an application for revocation of leave should have been filed at the earliest and, in any event, before the defendants participated actively in proceedings by filing written statements. In support of this contention, reliance is placed on the judgment of the Division Bench of this Court in *P.T.Ummer Koya v. Tamil Nadu Chess Association & others*, 2005-3-LW 590, (*P.T.Ummer Koya*) particularly paragraph 9 thereof at page 597.

5. As regards the application for rejection of plaint, learned counsel submits that the plaintiff had filed O.A.No.389 of 2025 seeking an order of interim injunction. By emphasising that the suit is in respect of alleged violation of



intellectual property rights, learned counsel relies on the judgment of the Supreme Court in *Novenco Building Industry v. Xero Energy Engineering Solutions Private Ltd. & Anr (Novenco)*, 2025 Livelaw (SC) 1027.

6. As noticed earlier, the plaint was presented in April 2025, whereas the application to revoke leave has been filed in January 2026. Meanwhile, both the defendants filed their written statements. The first defendant carries on business at Chennai and, therefore, leave was not necessary as regards the said defendant. In the written statement of the first defendant, it is stated that both parties undertake manufacturing activities outside Chennai and that this Court's jurisdiction has been invoked by resorting to a trap purchase.

7. From the averments in the first defendant's written statement, it appears that the plaintiff has placed evidence of alleged commercial sale within the jurisdiction of this Court. Whether such sale actually amounts to sale on commercial basis can be appropriately decided only in course of hearing the suit, whether as a preliminary issue or otherwise. In addition, as held in *P.T.Ummer Koya*, an application for revocation of leave should be filed within a reasonable time. In the facts and circumstances outlined above, the application for revocation cannot be entertained at this juncture.



8. Turning to the application for rejection of plaint, the Supreme Court in *Novenco* held that suits for alleged violation of intellectual property rights stand on a different footing inasmuch as each act of alleged infringement gives rise to a fresh cause of action. Even otherwise, the law laid down in *Yamini Manohar v. T.K.D.Keerthi*, 2023 SCC Online SC 1382 is that the Court should examine and decide whether the interim application is merely a ruse to circumvent Section 12A of the Commercial Courts Act, 2015. Based on the pleadings and documents on record, I am unable to reach such conclusion, especially in the context of an action for alleged violation of intellectual property rights. Therefore, the rejection of plaint application also fails.

9. For reasons set out above, both these applications are rejected without any order as to costs.

28-01-2026
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SENTHILKUMAR RAMAMOORTHY, J.

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