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CMA(TM) No. 22 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.02.2026

ORDERS PRONOUNCED ON : 10.02.2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

CMA(TM) No. 22 of 2025

ACE Foods Private Limited
C-30, Industrial Estate, Yeyyadi,
Managlore-575008, Karnataka.

Appellant(s)

Vs

1. The Registrar of Trade Marks
Office of the Trade Mark Registry,
IP Office Building, G.S.T Road,
Guindy, Chennai-32.

2.Modern Snacks Pvt Limited
D 44, Panki Site 2, Kanpur,
Uttar Pradesh

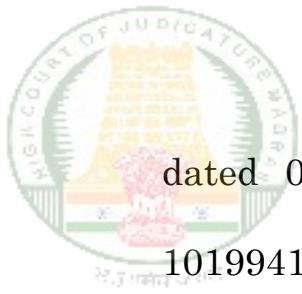
Respondent(s)

PRAYER

Civil Miscellaneous Appeal filed under Section 11 of the Trade Marks

Act to allow this Appeal by setting aside the order dated 04.07.2025

passed by the Respondent No. 1 dismissing the Interlocutory Petition



dated 08.10.2024 filed by the Appellant in the Opposition No. 1019941 in Application No. 4015733 in Class 35 and declaring the said Application No.4015733 as abandoned and consequently, directing the Respondent No. 1 to take on record the attested and singed Affidavit of evidence filed through the said Interlocutory Petition and to hear the Opposition on merits and pass such further or other orders as this Court deems fit and proper considering the facts and circumstances of the case and thereby render justice.

For Appellant(s): M/s.Rajesh Ramanathan
For Mr.M.Karthikeyan,
Respondent(s): Standing counsel for R1
M/s. Gladys Daniel and
Somnath De for R2

ORDER

This appeal has been filed against the order dated 04.07.2025 passed by the 1st respondent dismissing the interlocutory petition filed by the appellant dated 08.10.2024 in the opposition proceedings bearing No.1019941 in Application No. 4015733 in class 35 and declaring the said application as abandoned and for a consequential direction to the 1st respondent to take on record the attesting and singed affidavit of evidence and to hear the opposition



on merits and pass orders.

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2. Heard Mr.Rajesh Ramanathan, learned counsel for the Appellant and Mr.M.Karthikeyan, learned Standing counsel for 1st respondent and M/s.Gladys Daniel, learned counsel for 2nd respondent.

3.The Appellant is engaged in the manufacturing and production of packaged snacks and ready to eat food products under the name and style of **“MODERN KITCHENS’ Delite in Every Bite”**



The appellant filed application No.4015733 in class 35 for registration of the said mark on 03.12.2018 claiming use since 09.05.1984. The application was published in the trademark journal dated 02.09.2019 for third party opposition.

4. The 2nd respondent filed an opposition on 12.12.2019 under opposition No.1019941. The appellant filed their counter statement on 07.02.2020. Notice for counter statement was served upon the opponent by the Registrar on 10.02.2020. The Affidavit of evidence in support of opposition was filed on 06.04.2020 along with documents under Rule 45 of the Trade Mark Rules, 2017 (hereinafter



referred to as the “Rules”).

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5. Due to Covid Pandemic, the appellant filed affidavit of evidence in support of the application under Rule 46 without attestation or signature of the authorised signatory on 01.06.2020. The appellant also undertook to file the signed and attested affidavit under Rule 46 as and when directed by the 1st respondent. A reply affidavit of evidence was filed by the 2nd respondent on 31.07.2020.

6. There was no progress after the reply affidavit of evidence was filed by the 2nd respondent and the proceedings went into hibernation. It was revived by the appellant by filing an interlocutory application after paying the fees of Rs.40,000/- under Form TM-M on 08.01.2024. In the meantime, one Mr.Annappa Pai, who was the authorised signatory in the earlier affidavit filed for evidence in support of the application, died. Hence, the authorised signatory was changed and one P. Sudheendra Kamath was the signatory to the affidavit at the time of filing the interlocutory application along with the relevant documents.



7. The 1st respondent issued notice and directed both parties to address their arguments in the interlocutory application on 19.06.2025. The 1st respondent through the impugned proceedings dated 04.07.2025 dismissed the interlocutory application and further declared that Application No.4015733 as abandoned for failure to comply with Rule 46 of the Rules. Aggrieved by the same, the present appeal has been filed before this Court under Section 91 of the Trade Marks Act, 1999 (for brevity hereinafter referred to as the 'Act').

8. The reasons assigned by the 1st respondent for the rejection of the interlocutory application was that the evidence affidavit that was filed on 01.06.2020 was neither signed nor attested and therefore, it cannot be construed as an affidavit in proper format provided under the Rules. The 1st respondent also took into consideration the orders passed by the Apex Court during the pandemic period wherein the period of limitation was extended for all proceedings and ultimately, the Apex Court held that in cases where the limitation expires during the period between 15.03.2020 till 28.02.2022, all persons shall have a limitation period of 90 days from 01.03.2022. Considering this order, the 1st respondent concluded that



the affidavit of evidence ought to have been filed by the appellant on or before 30.05.2022 and whereas, it was filed only on 08.10.2024 along with the interlocutory application. Hence, it was held that the said affidavit of evidence was beyond the period of limitation provided under Rule 46 and that the 1st respondent did not possess the power to extend the time limit and by virtue of Rule 46(2), the application itself is deemed to have been abandoned by the appellant. Consequently, the application was treated as abandoned.

9. The main ground that was urged on the side of the appellant is that the affidavit of evidence was filed well within time on 01.06.2020 and the appellant was expecting the 1st respondent to issue notice and call for an enquiry and since the same did not happen, the appellant paid the necessary fees for expediting the proceedings and replaced the affidavit of evidence with the signature of the authorised representative and it was also attested. Therefore, the period of limitation cannot be calculated by taking the date of filing of the affidavit of evidence as 08.10.2024 and it has to be taken only as 01.06.2020. It was further contended that Section 21(2) of the Act alone contemplates the circumstances under which an



application is deemed to have been abandoned and that such language was not employed under Section 21(4) of the Act and therefore, if at all there is a delay in filing the affidavit of evidence, the same cannot result in deemed abandonment of the application. That apart, Section 157 of the Act gives the rule-making power and Section 157(2) (vii) of the Act, only provides for rule-making insofar as the manner of filing the affidavit of evidence and the time limit within which it has to be filed and it does not give any power for deemed abandonment, where the affidavit of evidence is not filed in the manner prescribed and within the time stipulated. In spite of the same, Rule 46 which provides for the manner of filing the affidavit of evidence and the time frame for filing such affidavit, included Rule 46(2) which provided for deemed abandonment of the application if no action is taken by the applicant within the time mentioned under sub-rule (1) of Rule 46 of the Rules. This Rule is ultra vires the Act and goes beyond the scope of Section 21 of the Act.

10. The learned counsel for Appellant to substantiate his submissions relied upon the following judgements :-



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(a) ***[Kangaro Industries Vs. V.Guard Industries and another]*** in (T) CMA (TM) No.193 of 2023

(b) ***[Raj vardhan patodia (HUF) Vs. Registrar of Trade Marks and another]*** in C.A.(Comm.IPD-TM) No.13 of 2024 & I.A.3379 of 2024.

(c) ***[V-Guard Industries Limited Vs. The Registrar of Trade Marks and others]*** in CA (comm.IPD-TM) No.39 of 2022

11. The learned counsel for the 2nd respondent submitted that strict timelines have been fixed under the Act and Rules and if such timelines are not adhered, the party has to necessarily lose his right. It was further submitted that if the Rule making authority was given the right to frame rules with respect to the manner of filing an affidavit of evidence and the time frame within which it has to be filed, such a rule must also provide for the consequences without which the Rule becomes in-operational. Therefore, if the concerned authority under the Rule finds that the affidavit of evidence was not



filed in the manner prescribed and it was filed with an exorbitant delay, it is only liable to be rejected and the authority does not have the power to extend the time or condone the delay. In such an event, the application must be deemed to have been abandoned. Therefore, it was contended that the 1st respondent was perfectly right in concluding that the application is deemed to have been abandoned since the affidavit of evidence was filed by the appellant after more than a period of two years without affording proper explanation. It was submitted that the Rules framed is in consonance with the Act and it is not ultra vires the Act as was contended by the learned counsel for the appellant. In any case, the relevant rule has not been put to challenge in the manner known to law.

12. The written submissions have been filed by the learned counsel for the 2nd respondent. To substantiate her submissions, the learned counsel relied upon the following judgements :-

(a) ***[P.Kasilingam and others Vs. P.S.G college of Technology and others]*** reported in 1995 Supp(2) Supreme Court Cases 348

(b) ***[The State of Tamil Nadu Vs. M/s.Hind Stone***



and others] reported in **1981 2 SCC 205**.

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13. The learned Central Government standing counsel appearing on behalf of the 1st respondent submitted that the 1st respondent has acted strictly in accordance with the Act and Rules and therefore, the order passed by the 1st respondent does not warrant the interference of this Court.

14. This Court has carefully considered the submissions made on either side and the materials available on record. This Court also carefully went through the impugned order passed by the 1st respondent.

15. The short issue that arises for consideration in the present appeal is as to whether the order passed by the 2nd respondent dated 04.07.2025 suffers from illegality and consequently requires the interference of this Court in this appeal.

16. The list of dates and events which are essential to deal with the core issue involved in the case is tabulated hereunder:-



Sl. No.	Dates	Particulars of Events
1.	03.12.2018	The appellant filed four applications bearing No.4015733 in class 35 for the mark “modern Kitchens’ Delite in every bite”, claiming use since 09.05.1984
2.	02.09.2019	The said Application was accepted for publication in the trademark journal bearing No.1917-0 for third party opposition.
3.	12.12.2019	The Application bearing No.4015733 was opposed by Respondent No.2 under the opposition No.1019941 on the ground that the mark of the appellant “MODERN KITCHENS’ Delite in every bite” is allegedly similar to the Trade Mark of the opponent.
4.	13.12.2019	The Notice of opposition for the said application was served to the appellant by the Respondent No.1
5.	07.02.2020	The Appellant filed their counter statement for the said application within stipulated time on delineating various grounds for which the opposition was liable to be dismissed.
6.	10.02.2020	The Notice for counter statement for the said Application was served to the respondent No.2 by the Respondent No.1
7.	06.04.2020	The respondent No.2 filed the affidavit for evidence in support of opposition for Application under Rule 45 of the Trade Mark Rules 2017
8.	01.06.2020	The evidence in support of Application under Rule 46 was filed by the Appellant within the stipulated time period as prescribed under the Trade Mark Rule, 2017.
9.	01.08.2020	The respondent No.2 filed their reply affidavit under Rule 47 of the Trade Mark Rules, 2017 Hence, the pleadings of opposition proceedings against the Application No.4015733 stood complete on 01.08.2020.



10.	08.10.2024	The respondent No.1 issued a hearing notice wherein the said opposition proceedings were listed in 14.10.2024 for hearing.
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17. The affidavit of evidence that was filed on 01.06.2020 under Rule 46 was not signed by the deponent nor was it attested. It is quite understandable that such a course of action was adopted by the 2nd respondent since it was at the peak of Covid pandemic. No one was clear as to how applications will have to be filed during this period, considering the lock down that was announced across the country and the only mode of communication was predominantly through online. Hence, the appellant cannot be faulted for having filed such an affidavit of evidence and what is evident is that the appellant did intend to file affidavit of evidence in support of the application.

18. The fact that there was no clarity in the process that is going to be adopted is also evident from the 2nd respondent filing a reply affidavit for the affidavit of evidence under Rule 47. When the reply was filed by the 2nd respondent, at Paragraph No.19, the 2nd



respondent did take a stand that they reserve the right to file appropriate reply as and when the signed and stamped copy of the affidavit is filed under Rule 46. Apart from this caveat, the 2nd respondent has come up with their stand on the affidavit of evidence filed in support of the application by the appellant.

19. The appellant while filing the affidavit of evidence also mentioned in the affidavit that the affidavit is not signed or stamped due to the lock down conditions imposed by the Government of India and that they undertake to file the signed and stamped copy under Rule 46 as and when directed by the 1st respondent. This background context assumes a lot of significance to understand the mind of the appellant in prosecuting the application.

20. It is an admitted case that there was no response from the 1st respondent and the appellant on its own made a request for expedited processing of the application under Rule 34 by paying the necessary fees by way of form TM-M on 03.06.2024. Pursuant to the same, the 1st respondent issued a hearing notice dated 03.09.2024 and listed the opposition proceedings on 14.10.2024. In the



meantime, on 08.10.2024 the interlocutory application was filed by the appellant to bring on record the signed and attested affidavit.

The earlier signatory had passed away in the year 2022 and therefore, the affidavit was signed by another representative.

21. The 1st respondent in the impugned order has held that the evidence affidavit filed on 01.06.2020 cannot be construed as an affidavit filed in the prescribed manner since it was not signed and attested / notarised. Therefore, the 1st respondent construed the filing date of the affidavit of evidence as 08.10.2024. The 1st respondent did consider the order passed by the Apex Court while calculating the limitation period and came to a conclusion that the limitation period came to an end on 30.05.2022 and whereas, the affidavit of evidence was filed in the prescribed manner only on 08.10.2024. This was much beyond the period prescribed under Rule 46 which is two months from the receipt of the copy of the affidavits filed in support of opposition. The 1st respondent held that there is no power to condone the delay or any discretionary power to extend the time limit prescribed under Rule 46. Therefore, the affidavit of evidence cannot be taken on record. As a consequence of this finding, the 1st



respondent declared that the application stood abandoned in the light of Rule 46(2) of the Rules.

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22. At this juncture, it will be relevant to take note of the order passed by this Court in the case of ***Kangaro Industries*** referred supra and the relevant portion is extracted hereunder:-

27. The object and purpose of the legal fiction is not far to seek. It is conceivable that an opposition may be lodged by an opponent, who fails to take any action thereafter. In order to deal with such situation, the rule incorporates the legal fiction of deemed abandonment. The settled legal position is that a legal fiction should be confined to its object and purpose and that the scope thereof should not be expanded beyond the same. On the facts of this case, not only was evidence lodged in support of the opposition, but also the first respondent filed evidence in support of the application and the appellant responded by filing evidence in support of the reply. In this factual context, it would undoubtedly fly in the face of reason to conclude that the appellant abandoned his opposition. Therefore, I conclude that the request for extension of time by the appellant, within the two month period prescribed in Rule 45(1), should be construed as an action under sub~rule (1) thereof. As a corollary, the legal fiction in sub~rule (2) of Section 45 does not get triggered.

23. It will also be relevant to take note of the order of the Delhi High Court in the case of ***[Raj Vardhan Patodia (HUF) Vs. Registrar of Trade Marks and another]*** referred supra and the



relevant portions are extracted hereunder:-

8. *Undoubtedly, there was a mistake on the part of the appellant in not filing the original EISO at the first instance. However, it is undisputed that a photocopy of the EISO was duly sent by the appellant to the respondents within the prescribed timeline.*

9. *Further, as soon as the appellant was informed of this mistake, by way of the aforesaid noting/ handwritten instruction received by the appellant on 21st June, 2023, the appellant sent the original EISO to the respondent no.1 within one week, i.e., on 28th June 2023 and the same was uploaded on the e-portal of the respondent no.1 on 3rd July 2023.*

10. *The filing of a photocopy of the EISO clearly shows that the intent of the appellant was to contest the matter on merits.*

11. *A Coordinate Bench of this Court in [V-Guard Industries v. Registrar of Trademarks](#), 2023 SCC OnLine Del 59, while deciding an appeal against the order of the Trade Marks Registry abandoning an opposition under Rule 45(2) of the Rules, made the following observations:*

"23. Even otherwise, it is well-settled, while procedural provisions are required to be accorded their due deference, they cannot be interpreted so rigidly as to



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result in evisceration of substantive rights vested in the citizens. The right to oppose registration of a trade mark is just as sacrosanct as the right to seek registration. In the peculiar facts of the present case once the application for opposition had actually been filed by the appellant, it would be entirely unfair for this Court to uphold the decision of the learned Deputy Registrar to treat the opposition as having been abandoned only because the evidence in support of the opposition was received three days late, especially as, prima facie, the appellant did make efforts to "leave" the evidence in support of the opposition with the office of the learned Registrar within the time stipulated in that regard in Rule 45(1) of the Trade Marks Rules."

12. In the facts and circumstances of the present case, in my considered view, the appellant cannot be condemned unheard on account of its non- compliance with the 'standard practice' of the respondent no.1, as stated in the affidavit dated 18th March 2025, that the Trade Marks Registry does not accept the documents which are not filed in original. As is also evident from the Rules, the Trade Marks Registry accepts e-filing of documents, therefore, insistence on filing documents in the original form at the first instance seems to be unnecessary. Needless to state, the Registry is free to ask for the original documents to be furnished by the parties at any later stage.



13. *In view of the above, there was no occasion for the respondent no.1 to give a finding that the opposition is deemed to have been abandoned under Rule 45(2) of the Rules.*

14. *It is also an admitted position that based on the copy of the EISO received by the respondent no.2, it filed its EISA in the opposition proceedings. Therefore, no prejudice would be cause to the respondent no.2 if the EISO is taken on record.*

24. It will also be relevant to take note of the order of the Delhi High Court in the case of ***[V-Guard Industries Limited Vs. The Registrar of Trade Marks and others]*** referred supra and the relevant portion is extracted hereunder:-

23. *Even otherwise, it is well settled that, while procedural provisions are required to be accorded their due deference, they cannot be interpreted so rigidly as to result in evisceration of substantive rights vested in the citizens. The right to oppose registration of a trade mark is just as sacrosanct as the right to seek registration. In the peculiar facts of the present case once the application for opposition had actually been filed by the appellant, it would be entirely unfair for this Court to uphold the decision of the learned Deputy Registrar to treat the opposition as having been abandoned only because the*



evidence in support of the opposition was received three days late, especially as prima facie, the appellant did make efforts to "leave" the evidence in support of the opposition with the office of the learned Registrar within the time stipulated in that regard in Rule 45(!) of the Trade Mark Rules.

25. In all the above orders, there is a common thread that runs in terms of understanding the object behind Rule 45 and 46 of the Rules where it has been held that procedural provisions should not be interpreted with rigidity to the extent of defeating the substantive rights vested in the parties. The Courts have also applied the prejudice test and in appropriate cases, where no prejudice will be caused to the other side by taking the affidavit of evidence, the delay was not put against the party. This Court took into consideration the fact that for the affidavit of evidence filed by the applicant, a reply was filed by the opponent and therefore, it is too late in the day for the authority to arrive at a conclusion that the application has been abandoned.

26. In the case in hand, it turns on the peculiar facts of the case. When the affidavit of evidence was filed on 01.06.2020, it was



well within time prescribed under Rule 46. However, the affidavit was not able to be signed and attested by the party owing to lock down during Covid pandemic. When the signed and attested affidavit was filed along with the interlocutory application on 08.10.2024, the very same contents were incorporated in that affidavit and the only improvement was that it was signed by the deponent and it was notarised. Hence, the affidavit of evidence that was filed on 08.10.2024 was a formal rectified affidavit duly signed and attested. Considering the fact that such filing of affidavit of evidence falls within the realm of procedure, pedantic interpretation should not be deployed. Thereby, defeating the substantive rights of the appellant. Hence, the affidavit of evidence must be construed as filed on 01.06.2020 and more so since the 2nd respondent filed a reply for the affidavit of evidence on 01.08.2020. While dealing with the issue of abandonment, the attitude of the parties will play a major role and considering the fact that the appellant was aware about the time limits and therefore, even during the pandemic period had managed to file the affidavit of evidence, though not signed and attested, shows the mind of the appellant to prosecute the application and not to abandon.



27. One more factor which will add strength to the above finding is that when the affidavit of evidence was filed on 01.06.2020, the appellant was aware of the fact that the same was not signed and attested and therefore, had specifically mentioned that the appellant undertakes to file the signed and stamped affidavit as and when directed. However, the appellant never got any response from the 1st respondent and the 1st respondent for the first time responded only after the appellant filed an application under Rule 34 for expediting the application by paying the necessary fees. Immediately, the 1st respondent revived the proceedings and fixed a date and even before the date of hearing, a formal interlocutory application was filed to bring in the signed and attested affidavit of evidence. It is quite unfortunate that the appellant who was interested in prosecuting the application took the effort to revive the proceedings but the same resulted to be counter productive for the appellant. The inaction on the part of the 1st respondent in not continuing with the proceedings and not issuing any notice to the appellant by calling upon the appellant to rectify the affidavit of evidence, has been swept under the carpet and the 1st respondent has now put the entire blame on



the appellant for the delay and rejected the application on the ground that there is a deemed abandonment. This process adopted by the 1st respondent smacks with arbitrariness and the 1st respondent who has also contributed for the delay cannot be allowed to throw the blame delay on the appellant and defeat their rights.

28. While dealing with this issue, this Court must also take into consideration the scope of certain provisions of the Act and the Rules thereunder.

29. For proper appreciation, Section 21 of the Act is extracted hereunder:-

21. Opposition to registration.—

(1) Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on



which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

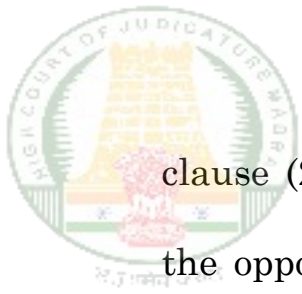
(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceedings before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

30. For the purposes of this case, Sub Clause (2) and Sub Clause (4) of Section 21 of the Act assumes significance. Under sub



clause (2), if the applicant does not send the counter statement for the opposition in a prescribed manner within two months from the receipt of the copy of the opposition, he shall be deemed to have abandoned the application.

31. Sub Clause (4) of Section 21 of the Act talks about the evidence relied upon by the opponent and the applicant and the manner it has to be given within the time prescribed. The legislature did not think it fit to provide for deemed abandonment for failure to file affidavit of evidence in the prescribed manner within the prescribed time limit. This is obviously due to the fact that it is a procedural requirement and such non-filing of the affidavit of evidence should not result in defeating the substantive right available to the parties. Therefore, if the opposition and the counter statement for the opposition are filed on time, it gives an indication that the parties are interested in proceeding further with the application and opposition. If ultimately, there is failure on the part of the parties in filing the affidavit of evidence in the prescribed manner within the prescribed time, at the best they will lose their right to adduce evidence and that can never result in a deemed



abandonment of the application or opposition as the case may be.

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32. It will also be relevant to take note of Section 132 of the Act, which deals with abandonment. This provision makes it clear that where an applicant is in default in prosecuting the application, the Registrar may by notice require the applicant to remedy the default within the time prescribed and after affording opportunity and if the applicant fails to act on the said notice, the Registrar can treat the application as abandoned. Hence, the Act provides a particular mechanism of issuing notice and affording opportunity before the Registrar can treat an application as abandoned.

33. It is also relevant to take note of Section 157 of the Act, which gives the Rule making power. For the purposes of this case, it will suffice to take note of Section 157 (2) (vii). The above provision provides the rule making authority to make rules insofar as the manner of giving notice of opposition, the fee payable for such notice, sending counter statement for the opposition and submission of evidence and the time limits there for. It is trite law that the Rule making authority cannot make Rules beyond the power prescribed



under the Act and the Rules cannot go beyond the scope of the Act or in other words, outweigh the provisions of the Act in which case it will be treated as ultra vires.

34. In the light of the Rule making power, for the purposes of this case, Rule 46 will be relevant and the same is extracted hereunder:-

46. Evidence in support of application :

(1) Within two months on the receipt by the applicant of the copies of affidavits in support of opposition or of the intimation that the opponent does not desire to adduce any evidence in support of his opposition, the applicant shall leave with the Registrar such evidence by way of affidavit as he desires to adduce in support of his application and shall deliver to the opponent copies thereof or shall intimate to the Registrar and the opponent that he does not desire to adduce any evidence but intends to rely on the facts stated in the counterstatement and or on the evidence already left by him in connection with the application in question. In case the applicant adduces any evidence or relies on any evidence already left by him in connection with the application, he shall deliver to the opponent copies of the same, including exhibits, if any, and shall intimate the Registrar in writing of such delivery.

(2) If an applicant takes no action under Sub-Rule (1) within the time mentioned therein, he shall be deemed to have abandoned his application.



35. A careful reading of Sub Rule (1) of Rule 46 shows that within two months from the date of receipt of the copies of the affidavit in support of opposition, the applicant shall file the affidavit of evidence to support his application or if he does not desire to adduce any evidence but intends to rely on the facts stated in the counter statement, he can inform about the same to the Registrar in writing.

36. Under Sub Rule (2) of Rule 46, the consequence of not complying with the requirement under Sub Rule (1) is provided. The consequence that is provided is that the application itself shall be deemed to have been abandoned.

37. On a plain reading of Sub Rule (2) of Rule 46, it is evident that it goes beyond the scope of Section 21 of the Act. Sub Section (2) of Section 21 of the Act, alone prescribes as to when an application will be deemed to have been abandoned. However, when it comes to evidence, Sub Rule (4) consciously does not provide for a consequence of deemed abandonment. If such an adverse consequence is provided under Sub Rule (2) of Rule 46, obviously it overrides the Act and to



that extent, it is ultravires the Act.

38. There is another way of looking at this issue by reading down Sub Rule (2) of Rule 46. As rightly contended by the learned counsel for 2nd respondent, no purpose will be served by merely providing for the manner of filing the affidavit of evidence and fixing the time limits, without providing for the consequences, if it is not complied with. If this argument is accepted, the only consequence which will arise due to the non compliance of Sub Rule (1) of Rule 46 will be that there will be deemed abandonment of letting in evidence on the side of the applicant for the opposition made by the opponent. This consequence will serve the purposes since the substantive right of the applicant to prosecute the application will not be defeated and at the same time, the applicant must pay the price for the non compliance of the requirements in filing the affidavit of evidence which will result in the applicant being prevented from letting in evidence for the opposition. If Sub Rule (2) of Rule 46 is read down to this extent, it will perfectly balance the rights of the parties and also take care of the consequence of non compliance of Sub Rule (1) of Rule 46.

39. The Act provides for a particular procedure insofar as



abandonment is concerned under Section 132 of the Act but however we are dealing with the issue of deemed abandonment wherein the law creates a deemed fiction as if the applicant / opponent due to their inaction are deemed to have abandoned their rights. In such a scenario, Section 132 of the Act, will not come into operation.

40. In the light of the above discussion, this Court holds on the peculiar facts of this case that the affidavit of evidence filed by the appellant on 01.06.2020 must be taken for calculating the period of limitation and the signed and attested affidavit that was sought to be brought on record on 08.10.2024 was only the formal expression of affidavit of evidence that was already filed on 01.06.2020. This is more so since for this affidavit of evidence filed on 01.06.2020, the respondent had already filed a reply on 01.08.2020. That apart, the signed and attested affidavit filed on 08.10.2024 had the very same contents except that it was signed by another deponent since the original deponent passed away on 29.06.2022. Hence, the affidavit of evidence is in compliance with Rule 46(1) of the Rules. In the light of this conclusion, there is no question of deemed abandonment of the application under Sub Rule (2) of Rule 46.



41. In the result, the impugned proceedings of the 1st respondent dated 04.07.2025 is hereby set-aside and there shall be a direction to the 1st respondent to proceed further with the application filed by the appellant strictly in accordance with law, after affording opportunities to both parties. Final orders shall be passed within a period of six months from the date of receipt of a copy of this order.

42. This appeal stands allowed in the above terms. No costs.

-02-2026

rka

Index:Yes

Speaking

Internet:Yes

Neutral Citation:Yes

To

1.The Registrar of Trade Marks
Office of the Trade Mark Registry,
IP Office Building, G.S.T Road,
Guindy, CHennai-32.

2.Modern Snacks Pvt Limited
D 44, Panki Site 2, Kanpur, Uttar
Pradesh



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N.ANAND VENKATESH J.

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10.02.2026