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(T)OP(TM)257 of 2023

In the High Court of Judicature at Madras

Reserved on 02.01.2026	Delivered on: 06.01.2026
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Coram :

The Honourable **Mr.Justice N.ANAND VENKATESH**

(T) OP (TM) 257 of 2023

Mr.Ranjitkumar Saklchand Jain
Prop. JR Trading
Master Mishra Estate
Hariyali Villate, Vikhroli (E)
Mumbai 400 083.

...Petitioner

.Vs.

Mr.Pratapchand (Deceased)
Hanzarimal No.165
Govindappa Naicken Street
Chennai-600 001.

- 1.M/s.Sanghvi Metal Corporation
Represented by its Partners
Having address at No.39 Kalathiappan Street
Choola, Chennai 600112.
2. Gunvant K Sanghvi Partner
M/s. Sanghvi Metal Corporation
Having address at No.39 Kalathiappan Street
Choolai Chennai 600112.



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3. Sanjay Kumar Partner
M/s. Sanghvi Metal Corporation
Having address at No.39 Kalathiappan Street
Choolai Chennai 600112.

4 Shailesh Kumar Partner
M/s. Sanghvi Metal Corporation
Having address at No.39 Kalathiappan Street
Choolai Chennai 600112.

5. The Registrar of Trade Marks
Chennai.

...Respondents

PETITION filed in Class 11 under the Provisions of Section 47, 57 and 125 of the Trade Marks Act, 1999, the registered trademark No.1077827 in Class 11 be expunged/removed from the register.

For Petitioner	:	Mr.S.P.Chockalingam
For Respondents	:	Mr.N.Surya Senthil Mr.Shubham M.George for M/s.Surana & Surana for R1 to R4 Mr.M.Karthikeyan Special Panel Counsel for R5

ORDER

This petition has been filed seeking rectification for removal of the registered Trademark No.1077827 for the Trademark “SANGHVI” issued in the name of Pratapchand Hanzarimal in



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Class 11, under the provisions of Section 47, 57 and 125 of the Trademarks Act, 1999 [hereinafter referred to as 'the Act'].

2.The case of the petitioner is that on 28.11.1996 the petitioner registered his commercial establishment to manufacture and trade various goods, which among other things included Roti Maker. It was sold under the brand name SANGHVI. The petitioner submitted an application for registration of the Trademark SANGHVI on 16.03.2001. The petitioner was issued with the Trademark Registration Certificate on 21.06.2005 with the word mark SANGHVI under Class 11, which also included Roti Maker. Even prior to that from the year 1996 onwards, the petitioner was selling the Roti Maker with the Trademark SANGHVI for more than 8 years. Thus, the petitioner enjoyed reputation and goodwill in the market. According to the petitioner, the respondents applied for the registration of the same Trademark



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SANGHVI in Class 11 on 04.02.2002 on the ground that they had been using the mark since 01.04.1967 and among other goods, Roti Maker was also included in the application. The respondents managed to obtain a Certificate of Registration of Trademark for the said Roti Maker with the same Trademark SANGHVI. The petitioner on coming to know of the same in the year 2017, submitted an application before the Intellectual Property Board seeking for rectification and removal of the Trademark SANGHVI insofar as the Roti Maker is concerned. The petition was transferred to this Court and it was renumbered as (T)OP(TM) No.257 of 2023.

3.The respondents have filed a counter affidavit. They have denied that the petitioner is a prior user of the Trademark SANGHVI. According to the respondents, the petitioner has not conducted any business whatsoever prior to 2002 and there are



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absolutely no documents to establish that he is a prior user. In view of the same, the respondents have sought for the dismissal of this petition.

4. On considering the pleadings, this Court by an order dated 05.12.2024, drafted the following issues:

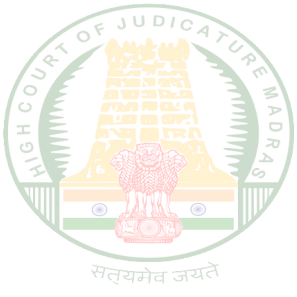
(a) Whether the respondents are prior in use of the trademark “SANGHVI” ?

(b) Whether the registration of the trademark “SANGHVI” is valid in law?

(c) Whether the Plaintiff is entitled for the relief sought for by him in the rectification application ?

(d) Whether the respondents are entitled to seek protection under Section 34 of the Trade Marks Act, 1999?

(e) To what other reliefs?



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5.The petitioner examined PW-1 and marked Exs.P.1 to P.12.

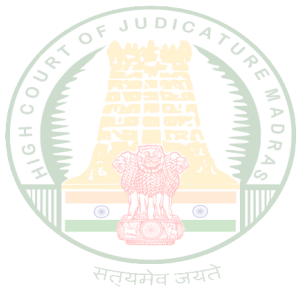
The respondents examined RW.1 and marked Exs.R.1 to R.10.

6.Heard both.

7.This Court has carefully considered the submissions made on either side and the evidence let in by both sides.

8.This Court will first deal with issues (a) and (b).

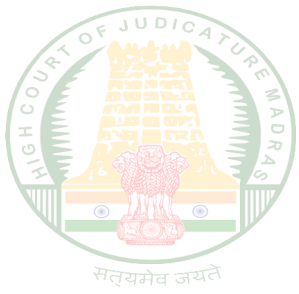
9.The specific case of the petitioner is that he was using the brand name SANGHVI for various products which includes Roti Maker since the year 1996. Incidentally, the word SANGHVI denotes a title that is conferred on a Jain monk, who takes Jain people on a pilgrimage to Palitana in Gujarat. In order to establish that the petitioner was a prior user, what has been relied upon are



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the invoice series marked as Ex.P.6 series from the year 2005 onwards. According to the petitioner, all the invoices prior to the year 2005 were lost during the floods in Mumbai on 26.07.2005. Thus, there is no document available in terms of invoices from the year 1996 to 2004. In order to make up for the non-availability of the invoices, the petitioner is relying upon the Quality Control Certificate which was marked as Ex.P.3, issued for the period between 26.12.1999 and 26.12.2002 which refers to the petitioner's Trademark SANGHVI. The petitioner is also relying upon the certificate issued by the Industries, Energy and Labour Department for the period from 2010 to 2013 marked as Ex.P.4, which contains the mark SANGHVI. Ex.P.5 is also a Quality Control Certificate for the period 27.10.2013 to 26.07.2016, which also contains the mark SANGHVI.



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10. Even though the petitioner attempts to project that Roti Maker, Khakhra Maker and Roti Roaster are different products, even from the Quality Control Certificate, it is seen that these terms have been used loosely. In one of the certificates, an Electric Toaster has been described as a Roti Maker and in another certificate, Electric Toaster has been shown as a Roti Maker and Khakhra Maker. Even in the invoices that are available, only from the year 2005, all these three terms have been used.

11. The petitioner in order to substantiate that the invoices prior to the year 2005 were lost, relies upon an FIR that was registered and which was marked as Ex.P.7.

12. The petitioner has also relied upon the affidavit of one Mr. Sohanraj, which was marked as Ex.P-9 to establish that he was purchasing goods from the petitioner since 1996 and that the



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invoices for the purchases were lost during the flood in Mumbai on 26.07.2005. The affidavit by itself cannot be read as an evidence since the deponent of this affidavit did not stand the test of cross examination. Therefore, it cannot be construed as an evidence within the meaning of Section 3 of the Indian Evidence Act, 1872.

13.It is also relevant to take note of the fact that even in the Trademark application, the petitioner has mentioned it as “proposed to be used basis”. Even though the petitioner claims that it was a mistake, the fact remains that the registration certificate relied upon by the petitioner specifically states that it is proposed to be used and this Registration Certificate is dated 21.06.2005.

14.On a careful analysis of the evidence available on record, the petitioner has not established that he is a prior user of the



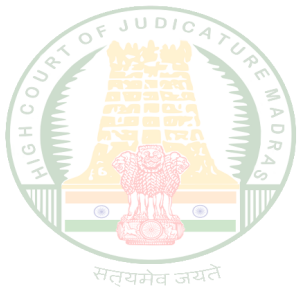
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registered Trademark SANGHVI for the Roti Maker, prior to the year 2005.

15.Insofar as the respondents are concerned, they have filed the application for the registration of the mark SANGHVI in the year 2002 and obtained the Registration Certificate in the year 2006. The specific case of the respondents is that they have been using the Trademark SANGHVI insofar as Roti Maker is concerned from the year 2000 onwards. To substantiate the same, the respondents have relied upon certain newspaper advertisements marked as Ex.R.4.

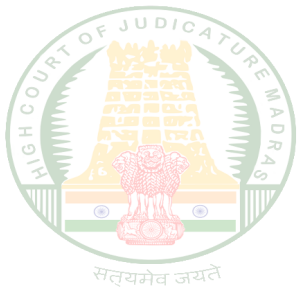
16.After the application was filed by the respondents, a search report was prepared and an examination report was issued, wherein the mark SANGHVI registered as No.997076 was also mentioned [Ex.P-12].



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17. On a careful appreciation of evidence tendered by both sides, it is seen that the respondents have clearly established that they are the prior user of the mark SANGHVI for Roti Maker atleast from the year 2000 onwards. Whereas the petitioner was not able to establish by means of any evidence that they have used this mark for Roti Maker before the year 2005. The non-availability of any documents prior to the year 2005 on the ground that they were all lost due to floods, is not convincing and the petitioner could have easily obtained the relevant documents from persons to whom the products were distributed from the year 1996 onwards. In view of the same, this Court holds that the respondents are the prior users of the Trademark SANGHVI for the product Roti Maker and hence the registration of the Trademark SANGHVI in favour of the respondents is valid in law. The issues (a) and (b) are answered accordingly.



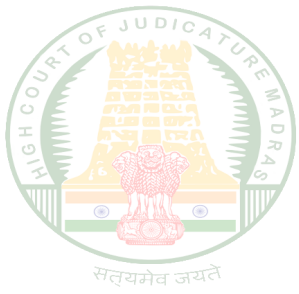
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18.Issue (d) is taken up for consideration.

19.Two main legal grounds raised on the side of the respondents are that there was acquiescence on the part of the petitioner in view of their inaction for almost 12 years and that they are the prior user of the Trademark for whom protection has been given under Section 34 of the Act.

20.The learned counsel for the petitioner by relying upon the judgment of the Delhi High Court in **Make My Trip (India) Private Limited .Vs. Make My Travel (India) Private Limited** reported in **MANU/DE/3392/2019**, submitted that mere delay in bringing an action is insufficient to defeat the relief of rectification sought for by the petitioner.

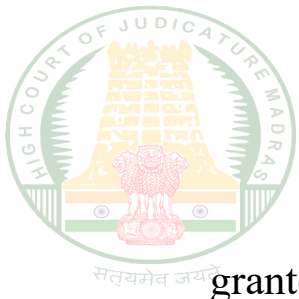


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21.The respondents had obtained the Trademark registration in the year 2006 and was able to substantiate that they were using the Trademark SANGHVI for Roti Maker atleast from the year 2000 onwards. Before the Registration Certificate was issued in favour of the respondents, it was published/advertised in the journal and the petitioner did not object to the application or oppose the registration under Section 21 of the Act. The rectification application has been submitted after almost 12 years post the publication of the respondent's mark, in the year 2017. Thus, for the period from 2006 to 2017, the petitioner has not made any attempt to question the usage of the Trademark by the respondents.

22.Insofar as the ground of acquiescence which is dealt with under Section 33 of the Act, the Court must be satisfied that there was a long usage of the Trademark and that such Trademark was



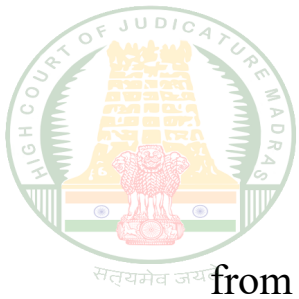
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granted in favour of the respondents after publishing/advertising in the same journal and even thereafter the respondents were using the Trademark, which was not questioned till the year 2017. This is more so in a scenario where both the petitioner and the respondents are selling their product with the same Trademark at Mumbai. There is substantial delay and laches on the part of the petitioner. Therefore, this Court has to necessarily hold that the rectification petition filed by the petitioner does not deserve merit on the ground of acquiescence, delay and laches.

23.Insofar as Section 34 of the Act is concerned, it was contended on the side of the petitioner that it will apply only in the case of an infringement and not in the case of rectification.

24.This Court has already held while deciding issues (a) and (b) that the petitioner did not establish that he is a prior user. Apart



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from that, there are lots of glaring contradictions and inconsistencies in the evidence of PW-1. It is also seen from Ex.P-3 that there is a mention about three independent brands which included SANGHVI. It has also been established in the cross examination that the petitioner is a mere trader and not a manufacturer. That apart even as per the Registration Certificate that was issued in favour of the petitioner, it is only stated that the petitioner is proposing to use the Trademark SANGHVI. The petitioner was also not able to provide any invoices atleast for the years 2002 to 2005 and the explanation given by the petitioner was also not found satisfactory. The petitioner did not even produce any sales turnover to substantiate his claim. The petitioner had also applied for registration in other popular brands like Crown and Nova. It is therefore evident that the petitioner was not able to establish that he is a prior user and whereas the respondents have established clear and continuous prior user of the Trademark



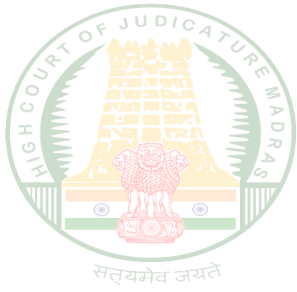
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SANGHVI. In fact the respondents have not even sought for any rectification of the Trademark given in favour of the petitioner and both the petitioner and the respondents seem to be using the Trademark SANGHVI for Roti Maker in Mumbai for a long-time.

25.In the light of the above discussion, this Court finds that the respondents are entitled to seek protection both under Section 33 and 34 of the Act. The issue (d) is answered accordingly.

26.Insofar as issues (c) and (e) are concerned, the answers to those issues will depend upon the answers that were given to issues (a), (b) and (d). Those issues have already been held against the petitioner. Therefore, the petitioner is not entitled for the reliefs sought for in this petition.



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27.In the result, this rectification petition stands dismissed.

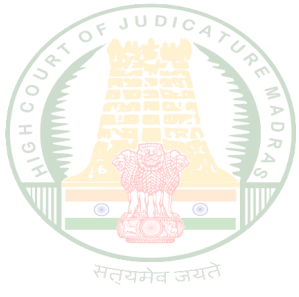
Considering the facts and circumstances of the case, there shall be
no order as to costs.

06.01.2026

Index : Yes (or) No
Neutral Citation : Yes (or) No
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To

The Registrar of Trade Marks
Chennai.



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N.ANAND VENKATESH,J

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P.D.ORDER in
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