

CRP.No.2480 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 31.07.2025

Order pronounced on : 22.08.2025

CORAM

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

CRP.No.2480 of 2025
& CMP.No.14213 of 2025

1.M/s.Anugraha Castings,
2/21-B, 2/21-C, MGR Nagar,
No.4, Veerapandi Village,
Coimbatore – 641 019.

2.K.Gobinath

..Petitioner

Vs.

Anugraha Valve Castings Limited,
Represented by its Chairman and Managing
Director Mr.R.Baskaran S/o. Shri Rathinam,
Having its registered office at 391/2,
Sengoda Gounded Pudur,
Arasur Village,
Coimbatore – 641 407.

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to direct the Commercial Court (District Judge, Cadre), Coimbatore, to frame the defendant's draft issues 4 to 12 as mentioned extracted hereunder:

4.Whether the plaintiff is the prior user of the word
“Anugraha”?



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5. Whether the plaintiff's adoption and use of the word "Anugraha" as its trademark is dishonest?

6. Whether the word "Anugraha" is a coined word, as claimed by the plaintiff?

7. Whether the plaintiff's trademark registration under Registration No. 5117934 (Incorrectly mentioned as 5117933 in the draft issues filed before the Hon'ble Commercial Court, Coimbatore) in Classes 6, 7, and 40 is valid?

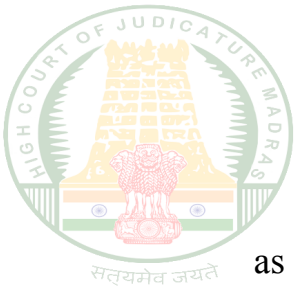
8. Whether the trademark registration of the plaintiff under trademark Registration No. 5117934 (Incorrectly mentioned as 5117933 in the draft issues filed before the Hon'ble Commercial Court, Coimbatore) in Classes 6, 7, and 40 suffers from suppression of material facts before the Registrar of Trademarks in obtaining Trademark Registration?

9. Whether the plaintiff has played fraud on the Registrar of Trademarks in obtaining Trademark Registration No. 5117934 (Incorrectly mentioned as 5117933 in the draft issues filed before the Hon'ble Commercial Court, Coimbatore) in Classes 6, 7, and 40?

10. Whether the defendants are entitled to the benefit of Section 17(2)(b) of the Trade Marks Act?

11. Whether the plaintiff is bonafide in filing the present suit?

12. Whether the defendants are entitled to costs, in particular compensatory and punitive costs, from the plaintiff for filing this vexatious suit?



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as issues in the suit in C.O.S.No.2 of 2025, pending on the file and to
WEB proceed accordingly in this matter in accordance with law.

For Petitioners : Mr.G.K.Muthukumar

For Respondent : Mr.R.Vidya Sankar
for Mrs.S.Manjula

ORDER

The revision petitioners challenge the order dated 09.06.2025, in and by which, the Commercial Court has framed certain issues in a commercial suit.

2.I have heard Mr.G.K.Muthukumar, learned counsel for the petitioners and Mr.R.Vidya Sankar, for Mrs.S.Manjula, learned counsel for the respondent.

3.Mr.G.K.Muthukumar, learned counsel for the revision petitioners would submit that the revision petitioners, being defendants in C.O.S.No.2 of 2025 before the Commercial Court (District Judge cadre), Coimbatore, have been proceeded against in said suit where the plaintiff has sought for the reliefs of prohibitory and mandatory injunctions to restrain the defendants from using the word mark 'Anugraha'. He would further state that the plaintiff, despite having issued a cease and desist notice in the year 2021, never chose to take any action for a period of four years, until the suit was filed in the year 2025.



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4.The learned counsel for the petitioners would refer to the draft issues filed by the defendants and also the draft issues suggested by the plaintiff and the issues that have been framed by the Commercial Court, which are now impugned in the revision and contend that crucial issues that have been raised by the revision petitioners have not been framed as issues in the suit. Referring to Section 124 of the Trademarks Act, the learned counsel for the petitioners would contend that when the defendants raises a plea of invalidity of the registration of the plaintiff's trademark, then the Court trying the suit is obligated to (i) if proceedings for rectification are pending before the Registrar or the High Court, stay the suit, pending disposal of such rectification proceedings and (ii) if no such proceedings are pending and the Court is satisfied that the plea regarding the invalidity of registration is *prima facie* tenable, then the Court has to raise an issue regarding the same and adjourn the case for a period of three months, for the party concern to apply for rectification.

5.It is therefore the contention of the learned counsel for the petitioners that when the defendants have specifically raised the plea of invalidity in the



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written statement, the Commercial Court ought to have framed an issue regarding the same, which would alone enable the defendants to move for rectification. He would therefore state that the failure to frame relevant issues has caused serious prejudice to the revision petitioners.

6. With regard to the word mark 'Anugraha', the learned counsel would contend that it is a common dictionary word in as many as seven languages and the claim of the same, being coined by the plaintiff, is absolutely false and not sustainable. He would further state that by making a false claim before the Trademark Registry that the word 'Anugraha' has been coined by the petitioners, the plaintiff has managed to get registration. The learned counsel would therefore state that when the word is common and open to trade, there can be no monopoly claimed by the plaintiff.

7. Also referring to the averments in the written statement, the learned counsel would submit that the Commercial Court has erred in not framing an issue with regard to the invalidity of registration. He would also place reliance on the decision of the Hon'ble Supreme Court in *Patel Field Marshal Agencies and Others Vs. P.M. Diesel Limited and Others*, reported in (2018) 2SCC 112,

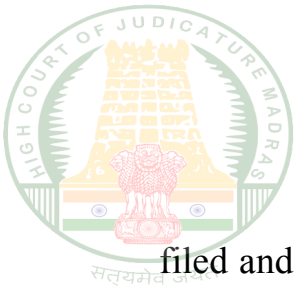


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where the Hon'ble Supreme Court held that the issue with regard to invalidity has to be framed in such circumstances. He would therefore pray for the revision being allowed.

8.Per contra, Mr.R.Vidya Shankar, learned counsel for the respondent would state that the issue regarding the invalidity of the plaintiff's trademark can never be entertained and rightly, the Commercial Court has not framed an issue in this regard. The learned counsel would bring to my notice that both the counsel for the petitioners and the respondent were heard by the Commercial Court on the question of framing of these issues and consciously and rightly, the Commercial Court has not accepted the arguments of the learned counsel for the petitioners that an issue regarding the plea of invalidity is necessary in the present suit. He would therefore state that there is absolutely no error committed by the Commercial Court and the issues are not required to be recast.

9.The learned counsel for the respondent, referring to Section 124(1) of the Trade Marks Act, would state that no doubt, the registered trademark can be impugned and there is no prohibition for the same. However, when a suit is

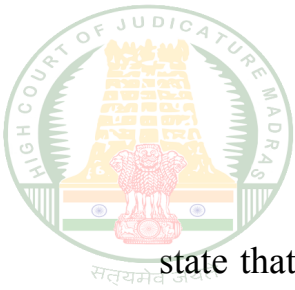


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filed and the defendant takes the plea of invalidity, unless the defendants show a *prima facie* and tenable claim with regard to the invalidity alone, the Court is obligated to frame an issue and thereafter, follow the procedure contemplated under Section 124 of the Trade Marks Act.

10. Referring to the allegations made in the written statement as well as the grounds in the present revision, the learned counsel would state that the invalidity of the word mark 'Anugraha' is attacked only on the ground that it is not a coined word and that it is common and open to the trade. Referring to the classes under which registration has been accorded to the plaintiff, namely classes 6, 7 and 40, the learned counsel would state that in all the classes, 'Anugraha' is not a word common to trade and Section 31(1) of the Trade Marks Act clearly operates in favour of the plaintiff.

11. The learned counsel for the respondent would also refer to the registration issued to the plaintiff, where the user from 2003 has been accepted and on 04.09.2021, the trademark has been registered in favour of the plaintiff. Pointing out to the limitation period of three years for challenging the registration by way of a rectification application, the learned counsel would



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state that having slept over the matter and not challenging the same within the statutory period, the defendants cannot now seek for an issue to be framed in order to clothe them with a right to seek for rectification, bypassing the statutory period of limitation. He would therefore pray for the revision being dismissed.

12.I have carefully considered the submissions advanced by the learned counsel on either side.

13.Firstly, it is to be noted that the issues were framed by the Commercial Court only after hearing the learned counsel on the draft issues suggested by the parties. Therefore, it is not open to the plaintiff to contend that there has been deprivation of fair opportunity to put forth their objection with regard to the issues to be framed in the suit, in the light of the pleadings.

14.It is not in dispute that the plaintiff claiming user from 2003 and that too, for a word mark 'Anugraha' being the name of the Company itself sought for trademark registration under classes 6, 7 and 40 and on 04.09.2021, the trademark registration has been accorded to the plaintiff. Any application for



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registration of trademark, as rightly contended by the learned counsel for the

respondent, is only after the Registry follows the procedure and protocol.

Publication is made and objections are also invited and only thereafter, the

registration is given. The object of Section 124 of the Trademarks Act is only to

prevent any vexatious objections.

15.It is the specific contention of the plaintiff that the word 'Anugraha' was coined by them. According to the plaintiff, the word has been coined from the names, taking 'An' from Anand Kumar and 'graha' from Grahalakshmi, who are none else than the founder and founder's wife of the plaintiff Company. It is also relevant to note that the company itself has been incorporated under the name 'Anugraha'.

16.Equally, it is also relevant to keep in mind that the plaintiff Company has sought for registration in classes 6, 7 and 40, which are all pertaining to Alloys and Casting, etc. Certainly 'Anugraha' cannot be said to be a common word insofar as these classes are concerned and the explanation of the plaintiff that, it is coined by them from the names of the founder and founder's wife, appears to be *prima facie* justified and acceptable. The only ground on which



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the registration is now attacked is that the plaintiff has given a false affidavit that the word 'Anugraha' has been coined by them and that the word is a common word in the trade.

17.The contention of the learned counsel for the petitioners that 'Anugraha' is a common dictionary word and that is being used often in as many as seven languages is no doubt a fact. However, it should be tested in the context of the classes in which the registration of the trademark is given. The word 'Anugraha' certainly not common to trade in Alloys and Casting industry, in respect of which classes alone, the plaintiff has been given registration of the trademark. In the light of the above, I do not see why the invalidity of the trademark has to be an issue in the suit.

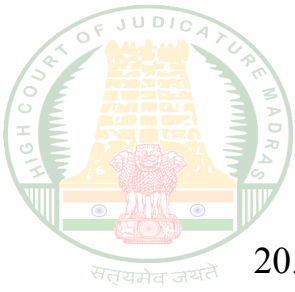
18.As rightly contended by the learned counsel for the respondent, it is not every objection, that requires an issue to be framed in order for Section 124 to kick in. Even the language of Section 124 makes it clear that the issue must be raised only when there is a *prima facie* and tenable case put forth by one of the parties. However, there is nothing on record to show that the word 'Anugraha' is common in Alloys and Casting industry/trade and therefore, mere



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raising of a defence, that too, belatedly would only render the suit being sent to cold storage. Therefore, from the very object of Section 124, it does not mandate that whenever a defence of invalidity is raised, the provision of Section 124 will have to be strictly followed. Section 124(1)(ii) is the relevant provision that applies to the facts of the present case. The Court is obligated to raise an issue and direct the defendant and adjourn the suit for three months to enable the defendant to apply for rectification of the registration, if only there is a *prima facie* and tenable plea of invalidity.

19. Testing the facts of the present case, in the light of the arguments advanced by the learned counsel, I do not see how the plea of invalidity, that is raised in the written statement, is *prima facie* or tenable, for the simple reason that though the word 'Anugraha' may be a common dictionary word, it is certainly not shown to be a common trade name in the classes 6, 7 and 40. If at all the revision petitioners were able to establish that the word is a common trade name in classes 6, 7 and 40, then the Commercial Court ought to have framed an issue regarding the plea of invalidity.



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20. Moreover, the explanation regarding the coining of the word in the Casting industry, where the word 'Anugraha' is not a common trade name, is also clearly justified by the fact that the name of the company is 'Anugraha' and further, it has been formed from using parts of the names of the founder and the founder's wife. Therefore, I do not see any merit in the arguments of the learned counsel for the petitioners that the plaintiff has given a false user affidavit before the Registry and that fraud has been played upon the Registrar of Trademarks.

21. No doubt, the learned counsel for the petitioners states that despite having issued a cease and desist notice in 2021, in the said notice, there was no mention about the registration of the plaintiff's mark and therefore, the defendant cannot be imputed with knowledge of the registration of the mark on the said date for enabling the defendant to move for rectification. My attention is also invited to the proceedings under Section 12(A) of the Commercial Court Act, 2015, wherein the pre-institution mediation also failed in 2024. In fact, even in the written statement, I find that the defendants have taken a specific plea that the 1st defendant and the plaintiff are members of the Trade Associations common to both and being in the same line of business, the



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plaintiff cannot claim ignorance of the 1st defendant and his presence sine 2018, which is also referred to in the plaint itself. The said argument equally applies to the defendants as well.

22. Therefore, when the defendants claim that both the plaintiff and the defendants are in a common trade and in the same line of business, that too, in the same locality, then there is no gain in contending now that the defendants were not aware of the plaintiff's use of the trademark. Nothing prevented the defendant from moving for rectification at the earliest point of time. Therefore, in order to get over the bar, now to enable to seek rectification of the plaintiff's trademark, the defendants are now attempting to have an issue framed regarding the plea of invalidity of the plaintiff's trademark in order to open an avenue for the defendants to seek rectification in line with Section 124 of the Trademarks Act.

23. I do not find any perversity or impropriety on the part of the Commercial Court in not framing an issue with regard to invalidity, especially after having elaborately heard the counsel for the parties on this specific issue of plea of invalidity. Therefore, I do not find justifiable grounds made out by



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the petitioners for framing an issue with regard to the plea of invalidity of the plaintiff's registered trademark.

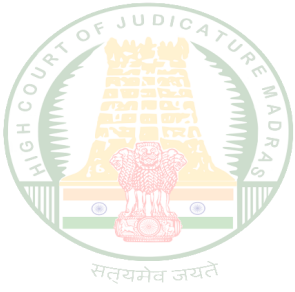
24.However, insofar as certain other issues which as rightly contended by the learned counsel for the petitioners, the Commercial Court ought to have framed the same in the light of the pleadings available before the Commercial Court. The issues *“1.Whether the plaintiff's adoption and use of the word 'Anugraha' as its trademark is dishonest, 2.Whether the word 'Anugraha' is a coined word, as claimed by the plaintiff?, 3.Whether the plaintiff has played fraud on the Registrar of Trademarks in obtaining Trademark Registration No.5117933 in classes 6, 7 and 40?, 4.Whether the defendants are entitled to the benefit of Section 17(2)(b) of the Trade Marks Act? and 5.Whether the defendants are entitled to costs, both compensatory and punitive for a vexatious suit having been filed by the plaintiff?,* are required to be framed as additional issues, apart from the issues that have been framed by the Commercial Court on 09.06.2025. It is however made clear that the plea of invalidity of the plaintiff's trademark which is sought to be framed as an issue and suggested in draft issues 7 of the defendants' issue is not required to be framed in view of the aforesaid discussion and in the facts and circumstances of the case on hand.



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25. Even in *Patel Field Marshal' Agencies's case*, the Hon'ble Supreme Court held that the intention of the legislature is only that all issues relating to and connected with the validity of the registration has to be dealt with the Tribunal and not by the Civil Court and when the Civil Court is approached and an issue of invalidity of trademark is raised, it cannot be decided by the Civil Court, but only by the Tribunal and the Tribunal will come into seisin of the matter only when the Civil Court is satisfied that an issue with regard to invalidity ought to be framed in the suit.

26. The Hon'ble Supreme Court, in paragraph No.31 of the said judgment, has held that the non-compliance of time lines for doing any act, must be understood to have consequences which are mandatory in nature, which affect the substantive rights of parties and therefore, the right to raise the issue of invalidity is lost forever if the requisite action to move the High Court/IPAB is not initiated within the statutory prescribed time frame and any other view enabling a party to collaterally raise, it is not permissible which would provide a window to get over the operation of the statute providing for deemed appointment of right to raise an issue in the suit filed by the other side.



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26.As held by the Hon'ble Supreme Court in paragraph No.35 of the said judgment, the requirement of satisfaction of the Civil Court regarding the existence of a *prima facie* case of invalidity and the framing of an issue to that effect before the law operates to vest jurisdiction in the statutory authority to deal with the issue of invalidity by no means, tantamount to permission of leave of the Civil Court, but is only a basic requirement to further the cause of justice by elimination of false, frivolous and untenable claims or invalidity that may be raised in the suit. Therefore, I do not find any grounds to entertain the challenge with regard to non-framing of an issue on the plea of invalidity.

27.In view of the above, the Civil Revision Petition is partly allowed, framing the additional issues which have been set out herein above alone at paragraph No.24 above and none other. There shall be no order as to costs.

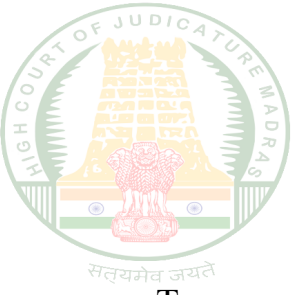
Connected Civil Miscellaneous Petition is closed.

22.08.2025

Speaking/Non-speaking order

Index : Yes/No

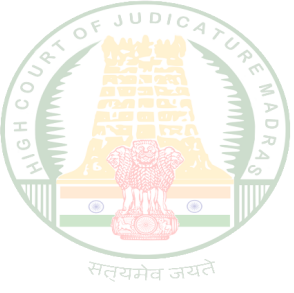
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To
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The Commercial Court (District Judge cadre), Coimbatore.



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P.B.BALAJI,J.

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Pre-delivery order made in
CRP.No.2480 of 2025
& CMP.No.14213 of 2025

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