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OSA(CAD) No. 1 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON  
09.02.2026

PRONOUNCED ON  
06.03.2026

CORAM

**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN**

**AND**

**THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**OSA(CAD) No. 1 of 2025  
& C.M.P.No. 7 of 2025**

M/s.J.R.K's Research and Pharmaceuticals Pvt.Ltd  
A Company registered under the Indian Companies  
Act, 1956 and having its registered office at No.11,  
Perumal Koil Street, Kundrathur, Chennai - 600  
069.

(Amended as per order dated 26.01.2021  
in Application No.3785/2021)

..Petitioner(s)

Vs

M/s.SANJEEVI PHARMA  
3/479, MIG Plot, Mugappair East, Chennai - 600  
050.

..Respondent(s)

**PRAYER:-** Appeal filed under Order XXXVI Rule 1 of O.S.Rules or 13-A of the Commercial Courts Act, 2015 r/w Clause 15 of Letter Patent to set aside the judgment dated 10-02-2023 passed by the learned Judge in C.S.No.651/2008 on the file of this Honourable Court and thus pass further orders.

For Petitioner(s):

Mr.M.S.Bharath

For Respondent(s):

Mr. R.Sathish Kumar



## JUDGMENT

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**(Judgment of the Court was delivered by K.Kumaresh Babu J.)**

The present Original Side Appeal has been filed against the order dated 10.02.2023 passed by the learned single judge in C.S.No.651 of 2008, on the file of this court, whereby the learned single judge had dismissed the said suit.

2. The appellant company which was promoted by one Dr.J.R.Krishnamoorthy, formulated the Siddha medical oil for the treatment of Psoriasis. The said formulation was developed in association with the National Research Development Corporation (NRDC). The appellant company had marketed the said product under the brand name “777 *Oil*”, which was registered as the Trade Mark under the Trade Mark Registration No.1061418 in class 5, dated 20.11.2001.Its further claimed that the promoter of the appellant company had been using the mark “777 *Oil*” since the year of 1992, much prior to the registration.

3. When it came to the knowledge that the respondent company which operates in the similar line of trade, had adopted and registered an identical and a deceptively similar trade mark, namely “*SANJEEVI 777 OIL*”, registered as trade mark under the Trade Mark Registration No.1167605 ( Form TM-1) Class



5 dated 20.01.2003, the appellant had initiated appropriate proceedings. The appellant had approached the Intellectual Property Appellate Board (herein after

referred to as IPAB) and challenged the respondent's trade mark registration.

The IPAB vide its order dated 16.08.2011, held that the respondent had no documents to substantiate their bonafide use of the trade mark. Especially no drug license with a list of drugs for which the license was issued was produced as required under the provisions of the Drugs and Cosmetics Act,1940.

Therefore the IPAB vide its order *supra* had allowed the rectification and ordered for the removal of the respondent's trade mark "**SANJEEVI 777 OIL**" from the Register of Trade Marks.

4. Aggreived by the same the respondent had approached this court challenging the IPAB order (*supra*) in W.P.No.20195 of 2011, which also came to be dismissed vide order dated 17.08.2011, thereby confirming the IPAB order and no further appeal was preferred by the respondent against the said order. The appellant company had further instituted a civil suit in C.S.No. 651 of 2008 before this court, *inter alia*, seeking permanent injunction against the respondent and restraining them from using the infringed trade mark. This court after hearing both sides had framed the following issues;

i) *Whether the plaintiff is the proprietor of the trademark 777 OIL and whether they have the right to restrain the defendant from using 777 in*



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*their trademark ?*

*ii) Whether the expression 777 oil publici juris in Siddha medicine ?*

*iii) Whether the defendant had registered and used the trademark SANJEEVI 777 OIL since 1993 and whether they have the right to continue to use the trade mark SANJEEVI 777 OIL ?*

*iv) Whether the Suit is liable to be dismissed on the ground of delay and laches ?*

*v) Whether the defendant had infringed the trademark of the plaintiff?*

*vi) To what reliefs is the plaintiff entitled to*

*vii) To what other reliefs ?*

5. It was contended the appellant company had formulated the Siddha Medicinal Oil for the treatment of Psoriasis, which was developed in association with the NRDC. The product was named as “777 Oil” by its promotor Dr.J.K.Krishnamoorthy who was using the trademark since 1992. It was submitted that the NRDC and the Appellant company entered into a license agreement dated 19.11.1990, wherein the NRDC acted as the licensor, having acquired the full ownership of the KNOWHOW and the PROCESSES from the



Central Council for Research in Ayurveda and Siddha (herein after referred to as CCRAS) for manufacture of the product and with the appellant company

acting as the licensee. The validity period of the license is upto 10 years, and subsequently the license was once again renewed on 28.08.2002. Later on the appellant company had started using a slightly different trademark, namely, **“Dr.JRK’s 777 OIL”**, which was registered the under the Trade Mark Registration No.2731595 dated 04.09.2017 in class 5.

6. *Per Contra*, the respondent company contended that it has been using the trademark **“SANJEEVI 777 OIL”** since the year 1993. The respondent also justified the adoption of the numerical expression **“777”** by assigning reasons for selecting the said numbers. It was further claimed that the appellant had discontinued the use of the mark **“777 Oil”** and had commenced use of the ir new trade mark **“Dr. JRK’s 777 OIL”**. In order to substantiate the aforesaid contention, the respondent had placed reliance upon an email communication dated 24.01.2014, addressed by the appellant to the Central Council for Research in Ayurveda and Siddha (CCRAS), which highlights the appellant’s intention to promote their brand **“Dr. JRK’s 777 OIL”** in the near future

7. The learned single judge after hearing both the sides and upon perusing the available materials noting that the name of the process as per the License Agreement dated 19.11.1990 was described as *‘Process knowhow manual for*



**“777 Oil Treatment of Psoriasis”** as developed by Research Institute’ in the

License Agreement, the learned single judge had held, that the Alphanumeric

words **“777 Oil”** had been used as a generic name for the product and the said

License Agreement did not stipulate that the Alphanumeric words **“777 Oil”** is

an exclusive Trademark of the appellant. Similarly placing reliance upon the

subsequent License Agreement dated 28.08.2002, the learned single judge had

observed that, upon the termination of the license the appellant shall cease to

have any right to use and practice of the KNOWHOW and the PROCESSES

held by them with respect to the article, and such rights would revert back to the

NRDC or its nominees. Therefore, based on the above observations, the learned

Single Judge held that the present case was a peculiar one, wherein the appellant

had adopted the alphanumeric expression **“777 Oil”** as a trademark and secured

registration under Registration No. 1061418 in Class 5, dated 20.11.2001, even

though the said expression was used as a generic name in the process for

manufacturing the oil for the treatment of psoriasis. It was further noted that the

appellant subsequently adopted a modified mark, namely **“Dr. JRK’s 777 Oil”**,

which stands registered under Registration No. 2731595 in Class 5, dated

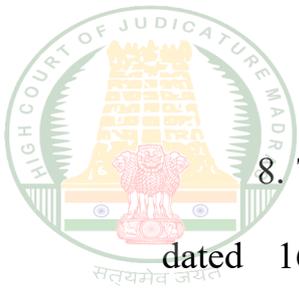
04.09.2017. On the other hand, the respondent was found to be using a different

variant of the trade mark, namely **“SANJEEVI 777 OIL”**, and had obtained

registration under Registration No. 1167605 (Form TM-1) in Class 5, dated

20.01.2003, which later was rectified vide IPAB order dated 16.08.2011.

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8. The learned single judge further observed that the IPAB vide its order dated 16.08.2021 had rectified the respondent's offending mark of "**SANJEEVI 777 OIL**" primarily on the ground that the continued use of the said mark was likely to cause confusion. It was also noted that the IPAB had not examined the license agreements entered between the NRDC and the appellant company. On the basis of the above observations made, the learned single judge had held that neither the appellant nor the respondent had any entitlement to claim monopoly over the mark of "**777 Oil**". The learned single judge had concluded that the adoption of the trade mark "**777 Oil**" by the appellant and the adoption of the trade mark "**SANJEEVI 777 Oil**" by the respondent was not bonafide. Consequently, by judgment dated 10.02.2023 passed in the aforesaid suit of C.S. No. 651 of 2008, the learned Single Judge held that no case had been made out and had dismissed the suit. Aggrieved by the judgment and decree dated 10.02.2023 (*supra*), the present appeal has been preferred challenging the impugned order passed by the learned Single Judge.

9. Heard Mr. M.S.Bharath the learned Counsel appearing on behalf of the petitioner and Mr.R.Sathish Kumar, the learned Counsel appearing on behalf of the respondent.

10. Mr.M.S.Bharath, learned Counsel appearing on behalf of the appellant would submit that the respondent's use of the offending Trade mark of



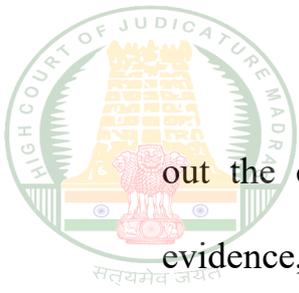
**“SANJEEVI 777 OIL”** amounts to the dilution of the appellant’s registered and prior used trade mark of **“777 OIL”**, thereby causing irreparable damage and prejudice to the appellant. The learned counsel would further contend that as soon as the appellant became aware of the respondent’s registration of the offending trade mark, the appellant had initiated the rectification proceedings towards the respondent in IPAB. Consequently, the respondent’s registration of the offending trademark **“SANJEEVI 777 OIL”** came to be rectified by the IPAB *vide* its order dated 16.08.2011. The said order of rectification was also upheld by this Court in W.P. No. 20195 of 2011, and the same had attained finality, as no appeal was been preferred by the respondent against the Writ Petition order. It is further submitted that the learned Single Judge in his impugned judgment, had erred in holding that the adoption of the trademark **“777 Oil”** by the appellant was not bonafide. As according to the learned counsel, the appellant is the bonafide user and registered proprietor of the trade mark **“777 Oil”**, under Registration No.1167605 in Class 5, and the validity of the said registration has never been challenged by the respondent in any manner. Learned counsel would also submit that the learned Single Judge failed to appreciate that the agreements entered into between the appellant and the NRDC pertained only to the grant of license in respect of the KNOWHOW, the manufacturing process and commercial exploitation of the product. The said agreements do not, in any manner, extend or discuss regarding the appellant’s registered trademark **“777 Oil”**.

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11. Learned counsel for the appellant would further submit that the learned Single Judge failed to appreciate that the appellant had uniquely coined and adopted, and has been continuously using the trademark “**777 Oil**” since August 1992 and had secured registration of the said mark with user date since August 1992. It is contended that there is a clear admission on the part of the respondent, in the proof affidavit filed by them, acknowledging the appellant as the registered proprietor of the trademark “**777 Oil**”. The learned counsel would submit that the finding of the learned Single Judge that the appellant was only interested in promoting its new mark “**Dr. JRK’s 777 Oil**” is erroneous. He vehemently contends that the aforesaid conclusion had been reached by placing an undue reliance upon an email communication between the appellant and CCRAS, which was marked as Ex.D1 on the side of the respondent. He further contends that the said email communication (Ex.D1) does not hold any evidentiary value as the same has not been proved in accordance with the provisions of the Indian Evidence Act, 1872. Therefore it is submitted that the learned single judge ought not to have relied upon the Ex.D1 to draw any adverse inference against the appellant. It is further submitted that the appellant has an extended use of products under the mark “**777 Oil**” and has never abandoned the said trademark. The addition of the prefix “**Dr. JRK’s**” to the mark “**777 Oil**” is stated to be part of a brand strategy, which was also clarified by the appellant during the course of cross-examination. He had further pointed



out the contradictions and discrepancies in the respondent's pleadings and evidence, such as, the respondent, in their written statement had claimed to have obtained a drug license in the year 1993, whereas the respondent's witness (DW1), who is the proprietor of the respondent company had admitted during his cross-examination that the drug license was obtained only in the year 2003. Further, though the respondent claimed use of the mark "**SANJEEVI 777 OIL**" since 1993, whereas in Form TM-1 of respondent's Trademark Application No. 1167605 in Class 5, the user date was mentioned only from the year 1999. It is submitted that no documentary evidence was produced by the respondent to substantiate their claim of use of the offending trademark of "**SANJEEVI 777 OIL**" from 1993.

12. The learned counsel for the appellant would further submit that the learned Single Judge failed to take note of the fact that the respondent had been using the offending trademark to market their products identical to those of the appellant's products, under a mark deceptively similar to that of the appellant's registered trademark. It is further contended that no evidence has been adduced by the respondent to establish that the appellant's trademark "**777 Oil**" is generic in nature. The defence made by the respondent that the expression "**777 Oil**" is common to the trade has also not been supported by any factual material, as the respondent has not produced particulars of other manufacturers allegedly using a similar mark in relation to Siddha medicinal oil, nor has any



documentary evidence been placed on record to show that the mark has become *publici juris*. Therefore, he would submit that the learned Single Judge passed the impugned judgment and decree without proper appreciation of the pleadings, oral and documentary evidence adduced by the parties, and in a manner contrary to the well settled principles of law. In view of the aforesaid facts and circumstances, the learned counsel would is submit that the impugned judgment warrants interference by this Court, and prays that the present appeal to be allowed.

13. *Per Contra*, opposing the above arguments made, Mr. R.Sathish Kumar, the learned learned counsel appearing on behalf of the respondent would submit that, that the respondent has been using the trademark “**SANJEEVI 777 OIL**” continuously and without interruption since the year 1993. It is further submitted that the respondent has secured registration of the said mark under Registration No. 1167605 in Class 5, dated 20.02.2003. He would contend that the finding of the learned Single Judge holding that the respondent’s adoption of the mark was not bonafide is erroneous. According to the learned counsel, the adoption of the numerical expression “777” was based on the manner of preparation and use of the product. It is submitted that certain ingredients of the product are dried in sunlight for seven(7) days; other ingredients are soaked in oil for seven(7) days; and the product is required to be used for a minimum period of seven(7) days to yield effective results. The



combination of these three stages of “seven days” was adopted as “777” and was used along with the respondent’s trade name “**SANJEEVI**”, thereby coining the mark “**SANJEEVI 777 OIL**”. It is therefore contended that the adoption and use of the trademark “**SANJEEVI 777 OIL**” is bona fide and was solely based on the attributes of the product and its use.

14. Learned counsel for the respondent would vehemently contend that several other manufacturers in the Siddha medicinal field are using the trademark “777” in relation to similar products, and therefore the expression has become *publici juris* and common to the trade. It is further submitted that the respondent has been openly and actively using the mark “**SANJEEVI 777 OIL**” in the market for nearly fifteen years. Despite both parties operating in the same line of trade, the appellant claims to have become aware of the respondent’s product only in June 2008. The learned counsel further submits, that the appellant has not disclosed the source or manner of such knowledge, thereby rendering the said averment lack of credibility. He would further submit that the appellant is attempting to mislead the Court by contending that the respondent’s mark is identical to “**777 Oil**”, whereas the respondent’s registered trademark is “**SANJEEVI 777 OIL**” as a whole. It is further contended that the appellant is presently more interested in promoting its modified trademark “**Dr. JRK’s 777 OIL**” , which stands substantiated by the email communication dated 24.01.2014, addressed by the appellant to the CCRAS

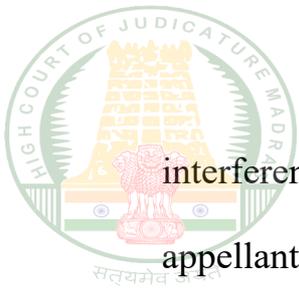


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15. The learned counsel vehemently contends that the appellant's claim, that its promoter is the inventor of the process or technical KNOWHOW process is not borne out by the license agreements entered between the appellant and the NRDC. *Per Contra* the agreements would rather show that the appellant developed the said product only in association with NRDC and was merely a licensee of the technology, the KNOWHOW and PROCESSES of the product, without any independent proprietary rights over the same. In conclusion it is submitted that there is no likelihood of confusion between the products of the both the parties. The respondent's product is visually distinct from that of the appellant. The appellant markets its product in bottles, whereas the respondent sells its product in cartons. It is further contended that the two marks are phonetically, structurally, and visually dissimilar when considered as a whole. In view of the above facts and circumstances, learned counsel prays this Court to dismiss the present appeal.

16. We have considered the rival submissions made on both the sides and have perused the materials available on record before us.

17. The primordial contention of the appellant in the present appeal is that, the judgment dated 10.02.2023 passed by the learned single judge is legally untenable and suffers from perversity, thereby warranting the



interference of this court. It is contended that respondent had infringed the appellant's registered trademark of "777 Oil" by using a deceptive offending trademark of "SANJEEVI 777 OIL". The aforesaid offending trademark of the respondent's was subsequently rectified *vide* IPAB order dated 16.08.2011. When the appellant had instituted a suit in C.S. No. 651 of 2008 before this Court, *inter alia*, seeking the decree of permanent injunction restraining the respondent from using their offending trademark, the learned Single Judge, by the impugned judgment herein, had dismissed the suit holding that neither the appellant's adoption nor the respondent's adoption of the respective trademarks was bonafide and that neither of the parties could claim monopoly rights over the same.

18. It is significant to note, in the instant case, that the appellant's earlier trademark "777 Oil", as well as the modified mark "Dr. JRK's 777 Oil" still continue to remain on the Trade Mark register as valid and subsisting registered trademarks. The appellant holds the lawful rights over both the trademarks. *Per Contra*, the respondent's trademark "SANJEEVI 777 OIL" stood rectified pursuant to an order dated 16.08.2011 passed by the IPAB, whereby the registration of the respondent's trademark "SANJEEVI 777 OIL" was directed to be removed from the Register of Trade Marks. The respondent had challenged the said order by filing a writ petition in W.P.No.20195 of 2011, and, the same came to be dismissed *vide* order dated 06.09.2011. Admittedly,



no further appeal was preferred against the dismissal of the writ petition.

Consequently, the order of the IPAB has attained finality, thereby affirming the

rectification and removal of the respondent's mark from the register. Therefore

in such circumstances, the respondent cannot, lawfully continue to use his

trademark "**SANJEEVI 777 OIL**".

19. Further this court also finds merits in the contention of the learned counsel for appellant, that the reliance placed upon by the learned single judge on Ex.D1, an email communication exchanged between the appellant and the CCRAS, for arriving at the inference that appellant is only keen on continuing their newly modified trademark "**Dr.JRK's 777 Oil**" is not sustainable. The aforesaid email communication which falls under the category of electronic records, has to be proved in accordance with the provisions under Section 65B of the Indian Evidence Act, 1872 (herein referred to as the 'Act'), which governs the admissibility of electronic evidence. Further the said document falls under the category of the secondary evidence as per the provisions under the Section 63 of the Act. In the present case it is further noted that, no certificate as mandated under the Section 65B(4) of the Act has been produced in respect of the said electronic record. Further the said document (Ex.D1) also fails to comply with the Sections 66 and 67A of the Act. In the absence of compliance with the aforesaid provisions, the document cannot be said to have been duly proved in the manner known to law. Therefore the said document Ex.D1 has not



been proved and consequently, any inference drawn on the basis of such unproved electronic record cannot be sustained, and the finding rendered on that suffers from perversity

20. It is further to be noted that the respondent has neither disputed nor initiated any proceedings to question the validity of the appellant's registered trademark "**777 Oil**". Similarly, neither the NRDC nor the CCRAS has raised any objection or challenged the appellant's registration of the trademark "**777 Oil**" before any competent authority. In the absence of any such challenge to the subsisting registration, the appellant's statutory rights over the said mark "**777 Oil**" remains intact.

21. In view of the aforesaid facts and the observations made hereinabove, we are of the considered opinion that the impugned judgment passed by the learned Single Judge suffers from perversity and warrants interference from this this court. Therefore the present appeal stands allowed and the impugned order dated 10.02.2023 is set aside and the suit is decreed as prayed for;

- a) A permanent injunction, restraining the respondent, their men, servants, agents or anyone claiming through or under them from in any manner infringing the appellant's Trademark "**777 Oil**" by using the offending trademark "**777 OIL**" or any other mark or marks which are similar or in



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any way deceptively similar to a colourable imitation of the appellant's trademark "777 Oil" either by manufacturing or selling or offering for sale or in any manner advertising the same is granted

- b) A permanent injunction, restraining the respondent, their men, servants, agents or anyone claiming through or under them from in any manner passing off their pharmaceutical products of the appellant by using the offending Trade mark "777 Oil" as and for the celebrated pharmaceutical products of the appellant with the registered trademark "777 Oil" or by using any other Trademark which is similar or deceptively similar to that of the appellants trade mark "777 Oil", is granted.
- c) The shall be a preliminary decree directing the respondent to render a true and faithful account of the profits earned by them through the sale of pharmaceutical products bearing the offending trademark "777 Oil" and directing payment of such profits to the plaintiffs by way of damages;
- d) The respondent is directed to surrender to the appellant the entire stock of unused offending goods with Trademark "777 Oil" together with cartons, strips, brochures, etc., bearing the offending Trademark for the destruction.



Consequently the connected miscellaneous petitions stands closed.

However, there shall be no order as to cost.

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**(C.V.K.,J.) (K.B.,J.)**

**06-03-2026**

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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**C.V.KARTHIKEYAN, J.  
AND  
K.KUMARESH BABU, J.**

**GBA**

A Pre-Delivery order made in  
**OSA(CAD) No. 1 of 2025**

**06-03-2026**