

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY**(T)OP(TM) No. 234 of 2023**

M/s.Sree Lakshmi Balaji Industries
Formerly Written as Sri Laxmi Balaji Industries
(earlier as Sri Raghavendra Agro Industries)
Navali Road, Kartagi 583 229,
Gangavati Taluk, Koppal District,
Karnataka, India

..Petitioner

Vs

1. Sri Lakshmi Venkateswara Rice Industries
Sindhanur Road, Siruguppa 583 121,
Bellary District, Karnataka State, India.
2. The Registrar of Trademarks
Office of the Trademarks Registry,
Chennai 600 032.

..Respondents

Petition filed under Sections 47 / 57 / 125 of the Trade Marks Act, 1999 praying to remove/rectify/expunge the entry pertaining to impugned Trade Mark Ayyappan Brand under No.899178 in class 30 from the Register.

For Petitioner

Mr.R.Sathish Kumar
for Mr.Ramji.G

For Respondents:

Mr.B. Karthick for R1
Mr. Rajesh Vivekanandan,
Deputy Solicitor General for R2



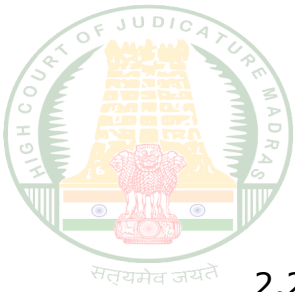
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ORDER

The first respondent herein had filed O.S.No.3 of 2012 on the file of the District Court, Bellary for remedies in respect of alleged infringement of its registered trade mark by use of a pictorial representation of Lord Ayyappa by the petitioner. The rival marks are applied in relation to rice and related products. During the pendency of said suit, the petitioner lodged this petition before the erstwhile Intellectual Property Appellate Board on or about 01.04.2016 under Sections 47 and 57 of The Trade Marks Act, 1999 (47 of 1999) [hereinafter referred to as TM Act].

2. The contention of Mr.R.Sathish Kumar, learned counsel for the petitioner in support of the request for rectification may be summarised as under:

2.1 The user date is recorded as 14.01.1999 in the application for registration, whereas it is recorded as 13.07.1992 in the advertisement published in the Trade Mark Journal No.1382 on 16.12.2007. The first respondent has failed to provide any evidence that an application for amendment of the user date was filed and accepted by the Registrar of Trade marks. The Registrar of Trade Marks also could not provide any evidence for the acceptance of an application for amendment of the user date. Therefore, there is a contravention of the statute warranting rectification under Section 57(1) of the TM Act;



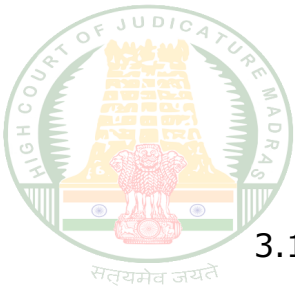
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2.2 The trade mark as registered is depicted at page No.34 of the paper book of the petitioner. When the trade mark as registered is compared with the trade mark as used, there are significant differences. The first respondent has failed to provide any evidence for use of the trade mark as registered. In effect, the first respondent has not used the trade mark as registered. Consequently, the first respondent's mark is liable to be removed for non-use under Section 47 of the TM Act;

2.3 Based on a complaint lodged under Section 107 of the TM Act, the Registrar of Trade Marks concluded that the first respondent had misrepresented that it is using registered trade mark while using the mark shown in the invoices relied on by the first respondent. The standard applied while deciding an application under Section 107 is akin to that prescribed in Section 55;

2.4 Form TM-16 does not necessarily relate to alteration of date of use. Merely by asserting that the application in Form TM-16 was filed, the first respondent cannot establish that the user date was duly modified.

3. The contentions of learned counsel for the first respondent may be summarised as under:



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3.1 The Registrar of Trade Marks will not modify the user date

unless an application for amendment of user date had been accepted;

3.2 Invoices issued from 10.06.1993 have been filed and these invoices support the user claim from 13.07.1992;

3.3 While the pictorial depiction of Lord Ayyappa in the invoices does not exactly match the depiction in the registered trade mark, the use of the trade mark by the first respondent was *bonafide* and the alteration does not substantially alter the identity. Section 55 of the TM Act comes to the aid of the first respondent and no case is made out for rectification under Section 47;

3.4 In support of these contentions, following judgments were relied upon:

(i) Mangalore Ganesh Beedi Works vs. District Judge, Munsif City and Others, MANU/UP/0680/2005, particularly paragraph Nos.20 and 23 thereof;

(ii) Lupin Limited Vs. Eris Lifesciences Pvt. Ltd. and Ors, MANU/MH/3536/2015, particularly paragraph No.15.2 thereof;

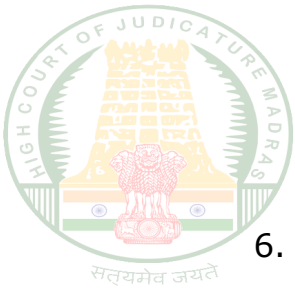


(iii) *Radico Khaitan Limited vs. Brima Sagar*

WEB COPY *Maharashtra Distilleries Ltd., MANU/DE/3230/2014,*
particularly paragraph No.36 thereof.

4. In view of the rival contentions, the first question that falls for consideration is whether the impugned mark is liable to be removed from the register on account of the discrepancy in user date between the application and the advertisement. As recorded earlier, the user date mentioned in the application is 14.01.1999, whereas the user date mentioned in the advertisement is 13.07.1992. The materials on record do not contain an application for amendment or any order accepting the request for amendment. Learned counsel for the Registrar of Trade Marks submits that all relevant records were destroyed and that the Registrar is unable to respond on the basis of records as to whether an application for amendment was filed, and if so, whether such application was allowed. In these circumstances, it becomes necessary to examine the evidence of use of the mark.

5. The first respondent has filed invoices issued between 10.06.1993 and 03.10.2015. The invoice dated 10.06.1993 contains a pictorial depiction of Lord Ayyappa. The invoice has been issued by Sri Lakshmi Venkateswara Rice Industries and this is clearly discernible from the invoice.



6. The trade mark, as registered, and marks, as used on invoices

dated 10.06.1993 and 28.10.1999, are scanned and reproduced below:



899178 - 21/01/2000

S. SATHYANARAYANA SETTY

B.K. PADMAVATHAMMA

trading as SRI LAKSHMI VENKATESWARA RICE INDUSTRIES

SINDHANUR ROAD, SIRUGUPPA- 583121, BELLARY DISTRICT, KARNATAKA STATE.

MANUFACTURERS AND MERCHANTS

Address for service in India/Agents address:

A.V. NATHAN ASSOCIATES.

451, 2ND CROSS, 3RD BLOCK, 3RD STAGE, BASAVESHWARA NAGAR,

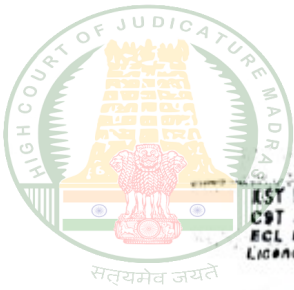
BANGALORE-560 079, KARNATAKA STATE

User claimed since 13/07/1992

(CHENNAI)

RICE, BROKEN RICE, RICE BRAN.

REGISTRATION OF THIS TRADE MARK SHALL GIVE NO RIGHT TO THE EXCLUSIVE
USE OF DEVICE OF "LORD AYYAPPAN" AND ALL OTHER DESCRIPTIVE MATTERS
APPEARING ON THE LABEL.



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KST No. 88805029
CST No. 88805021
ECL No. 1132/03
Licence No. 50/93-94

Sri Ayyappa Swamy Prasanna
CASH/CREDIT-BILL

Resi 7467
Shop 7460
STD 08396



Sri Lakshmi Venkateswara Rice Industries
Raichur Road, SIRUGUPPA-583121 (Bellary Dist.)

No. 9

Date 10.6.93

To,

Sri poorjath Traders. 6th Main
APMC yard. Bangalore

INVOICE of

Despatched by Goods Train/Lorry from Siruguppa To Bangalore
Invoice/Lorry No CA 56658 Through Broker Bi
KST. No. 71508238 CST. No. 511/88

No. of Articles	Particulars	Rate	Amount	
			Rs.	Ps.
<u>70</u> <u>5.50</u>	<u>Bag of 50kg Rice</u> <u>Long grain</u>	<u>700/-</u>	<u>25550</u>	<u>00</u>
			<u>1</u>	
			<u>25550</u>	<u>00</u>

R.C. No.

T.C. No.

Lorry No.

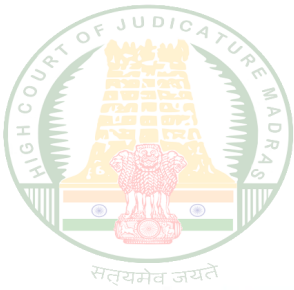
RUPEES Twenty five thousand five hundred fifty only

- 1) We are not liable for any losses or damages that may occur to goods in transit
- 2) Buyer is bound to furnish 'C' Form to us
- 3) Total Lorry freight Rs. 1050 - 00
Less Advance Rs. 10 - 00 Bath
Balance Rs. 1060 - 00

For Sri Lakshmi Venkateswara Rice Industries

[Signature]
Signature.

our Special Product "Ayyappa Brand" Rice 50 Kg PKg.



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MEMORANDUM NO. 00193.94 CASH/CREDIT/BILL Shop 47460 Mill 47131

Sri Lakshmi Venkateshwara Rice Industries
Raichur Road, SIRUGUPPA-583121. [Bellary Dist]

No. 32 Date 22.10.99

TO: Sri Hemdaji & Co, 5th Main Road
Apna Yashwanth Nagar

INVOICE of

Dispatched by Goods Train/Lorry from Siruguppa To Bangalore		Invoice/Lorry No. KA.34/111798		Through Broker		Dt.	
CST No. 10709324		CST No.		ECL No. 260/21-27			
No. of Articles	Particulars	Rate	Rs.	Amount	Ps.		
1	74 50kg Bags of Rice	1170/-	43290/-		00		
		one	paid				
				43290/-	00		
R.C. No.							
T.C. No.							
Lorry No.							

Rs. 43290/-

We are not liable for any losses or damages that may occur to goods in transit

Buyer is bound to furnish 'C' Form to us.

Total Lorry freight Rs. 2220/-

Less Advance Rs.

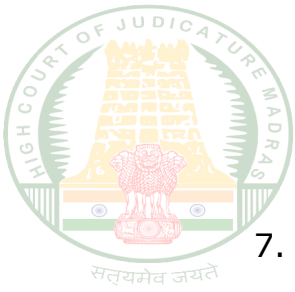
Balance Rs. 2220/- Total

For : Sri S. L. Venkateshwara Rice Industries

Signature.

our Special Product "Ayyappan Brand" Rice 50 kg. Pkg.

Use always Ayyappan Brand Rice



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7. Said registered trade mark contains three elements. The said

elements are as follows:

(i) Pictorial depiction of Lord Ayyappa;

(ii) The trading name Sri Lakshmi Venkateswara Rice Industries, Siruguppa written in a ring surrounding the pictorial device;

(iii) Ayyappan Brand written in words in a rectangular box beneath the ring.

8. Out of these three elements, only the pictorial depiction finds place as a mark on the invoices issued between 10.06.1993 and 09.04.1998. As recorded earlier, the invoices clearly indicate, however, that they are being issued by Sri Lakshmi Venkateswara Rice Industries. This leaves no room for confusion with regard to identity or source. Invoices issued later, from about 28.10.1999, also contain the words 'Ayyappan Brand' beneath the pictorial device of Lord Ayyappa.

9. As contended by learned counsel for the petitioner, there is variation in the pictorial depiction of Lord Ayyappa when the mark as registered is compared with the mark as used in the invoices. This leads to the question whether the mark is liable to be rectified by exercising the power under Section 57(1) or 57(2) of the TM Act. The Registrar of Trade



Marks does not state that no application was received for amendment from the first respondent. Instead, as recorded earlier, the stand of the

Registrar of Trade Marks is that records are unavailable and that records were destroyed. While it is not possible to conclude on the basis of records that an application for amendment was made with regard to user date and that such application was accepted, it cannot equally be concluded that the first respondent indulged in misrepresentation or fraud with regard to the change of the user date. In these facts and circumstances, I conclude that the alleged contravention in relation to the registration does not constitute a valid reason to direct removal of the mark by exercising power under Section 57. The next aspect that falls for consideration is whether rectification is warranted on the ground of non-use.

10. A trade mark can be removed from the Register on the ground of non-use if the petitioner establishes that the case falls either within clause (a) or clause (b) of sub-section (1) of Section 47. In order to fall within clause (a), the trade mark should have been registered without any *bona fide* intention on the part of the applicant to use it in relation to the relevant goods or services and such mark should not have been *bona fide* used in relation to such goods or services upto a date ending three months before the date of application. In order to fall within the scope of clause (b), there should have been no *bona fide* use of the mark in respect of the relevant goods or services for a continuous period of five



years from the date on which the mark was entered in the Register and ending on a date three months prior to the date of application for rectification.

11. As recorded at the outset, the rectification petition was filed on or about 01.04.2016. The mark was registered on 22.01.2008. Such registration took effect from the date of application on 21.01.2000. The first respondent has filed invoices relating to use of the mark from 10.06.1993 to 03.10.2015. In light of the contention of learned counsel for the first respondent that even use of an altered mark qualifies as use, the question that falls for consideration is whether such use constitutes use for purposes of defeating an action under Section 47. The first respondent relied on Section 55 to contend that use by the first respondent qualifies as acceptable use of a registered mark. Sub-section(1) of Section 55 reads as under:

55. Use of one of associated or substantially identical trade marks equivalent to use of another.-

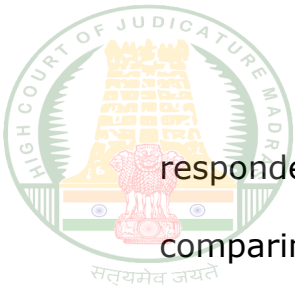
(1) Where under the provisions of this Act, use of a registered trade mark is required to be proved for any purpose, the Registrar or the High Court, as the case may be, if and, so far as it shall think right, accept use of a registered associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.



12. The text of sub-section(1) indicates that the use of a trade mark with additions or alterations may be relied upon to prove use of the registered trade mark provided such additions or alterations do not substantially affect identity.

13. As discussed earlier, the earlier invoices contain a pictorial depiction of Lord Ayyappa, which does not tally with the pictorial depiction in the registered mark. They also contain the trading name of the first respondent. Such trading name is, however, not written within the ring surrounding the pictorial depiction of Lord Ayyappa, as is the case in the registered trademark. Nonetheless, it cannot be said that the alteration substantially affects the identity. Therefore, I conclude that use of the mark by the first respondent as evidenced by invoices issued from 10.06.1993 to 03.10.2015 qualify as proof of use in terms of Section 55 of the TM Act. I also conclude that such use is *bona fide*. The period of use extended, as per evidence, at least until 03.10.2015. The assertion in the counter statement is that the mark has been used continuously since 1992. As a consequence, the petitioner has failed to make out a case for rectification under Section 47 of the TM Act.

14. The first respondent did not, however, apply for and receive permission from the Registrar under Section 59 for alteration of the mark. Therefore, if an action for infringement were to be filed by the first



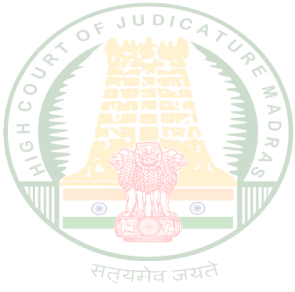
respondent, deceptive similarity would be required to be tested by comparing the petitioner's mark, as used, with the first respondent's mark as registered but not as used.

15. A final aspect remains to be considered, viz., the order issued by the Registrar of Trade Marks on the complaint lodged by a third party under Section 107 of the TM Act. A complaint under Section 107 pertains to alleged misrepresentation of a mark as a registered mark. In the invoices relied upon by the first respondent in these proceedings, there is no assertion that the mark is registered. Therefore, the decision of the Registrar of Trade Marks in the complaint under Section 107 of the TM Act has no bearing on this petition and, in any event, such order has been set aside by this Court in *(T)CMA(TM) No.24 of 2023, S.Datta Shabarish trading as M/s.Sri Lakshmi Venkateshwara Rice Industries Siruguppa, Bellary District Vs. Registrar of Trade Marks and another*, by order dated 26.02.2024.

16. For reasons aforesaid, the petition for rectification fails and the same is dismissed. There shall be no order as to costs.

11.03.2026

Index: Yes
Neutral Citation: Yes
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SENTHILKUMAR RAMAMOORTHY, J.

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To

The Registrar of Trademarks
Office of the Trademarks Registry,
Chennai 600 032.

(T)OP(TM) No. 234 of 2023

11.03.2026