



2026:DHC:5159



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement reserved on: 16.03.2026
Judgement delivered on: 24.06.2026

+ C.O. (COMM.IPD-TM) 180/2022

MR P.C. DURAISAMYPetitioner

versus

KEWAL KRISHAN KUMAR & ANRRespondents

Advocates who appeared in this case:

For the Petitioner : Mr. Kumar Sudeep, Advocate.

For the Respondents : Mr. Neeraj Grover, Mr. Angad Deep Singh,
Ms. Mohona Sarkar and Ms. Riya Luthra,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. The present petition has been filed seeking removing, expunging or cancelling the trademark “SHAKTI” registered under no.701410 in Class 30 in the name of respondent no.1 from the Register of Trade Marks under Section 47(1)(a) and 47(1)(b), and 57(2) of the Trade Marks Act, 1999 (hereinafter referred to as ‘Act’).

2. Facts as culled out from the petition are as under:

(a) Petitioner claims to be a leading manufacturer of food products, and in the course of the said business, had honestly conceived and adopted the trademark “SAKTHI” as its trade name, trading style, and



2026:DHC:5159



trademark since the year 1977. Petitioner manufactures food products including varieties of spice and masala powders, edible oils, pickles, flour and papad. Petitioner claims that its products are available PAN India and are also exported to various countries like Australia, Europe, Malaysia, Singapore, South Korea, United States of America, and other west-Asian countries.

(b) The petitioner claims to have obtained multiple registrations of the trademark “SAKTHI”, primarily for Classes 29 and 30, and other classes as well, which are valid and subsisting till date.

(c) Petitioner claims to have adopted a logo for its house mark “SAKTHI” which contains distinctive artistic devices, colour scheme, and arrangement of features that are unique and identifiable by the trade and public. Petitioner states that the said logo is protected under the Copyright Act for the artistic works.

(d) Petitioner also claims that by way of an Agreement dated 01.06.1998, it appointed a company under the name and style of ‘Sakthi Masala Private Limited’ as its exclusive licensee to manufacture, sell, market and distribute its products worldwide. In para 9(i) of the petition (Form-1), the petitioner has enlisted the awards and accolades received by it in the last 40-45 years. Petitioner also contends that on account of the high quality products manufactured by it under the trademark “SAKTHI”, the said products have become immensely popular PAN India. The petitioner also claims to have achieved high sales turnover running into crores of rupees every year. The petitioner also states that



2026:DHC:5159



it promotes its brand by sponsoring various shows on television channels, etc. apart from widely advertising the mark “SAKTHI” in all kinds of media including audio, visual, and print. According to the petitioner, on account of the aforesaid facts, the mark “SAKTHI” has garnered substantial goodwill and immense reputation in the last four decades.

(e) Petitioner also claims to have taken immediate legal remedial steps in order to protect its mark “SAKTHI” from infringers, etc. Petitioner also claims that the aforesaid steps have ensured that the mark “SAKTHI” has come to be perceived as one of the most recognizable marks amongst the traders and consumers who identify the said mark with the applicant alone and none else.

(f) Sometime in the year 2005, petitioner claims to have gained knowledge about an application filed by respondent no.1 for registration of the mark “SHAKTI” in Class 30 under no.701410. Petitioner also initiated opposition proceedings against the said application, however, the said opposition was dismissed on procedural grounds, and the application of respondent no.1 was granted registration in the year 2018.

(g) Petitioner also stated that, in a previous dispute both parties entered into a settlement by undertaking not to proliferate by filing fresh applications for the mark “SAKTHI”/ “SHAKTI”. It is alleged that respondent no.1 suppressed many of its pending applications with an oblique motive to gain an unfair edge over the petitioner. Petitioner



2026:DHC:5159



contends that the impugned mark is one such application which was suppressed by respondent no.1 in the Settlement Agreement. Petitioner also submitted that while deciding an opposition filed by respondent no.1 against one of the petitioner's marks i.e. "SAKTHI TOOR DHALL" under application no.1006557 in Class 30, the Deputy Registrar had held that respondent no.1 has not been able to prove its claim of the use of the mark "SHAKTI BHOG", and proceeded to allow the petitioner's application *vide* order dated 26.06.2009.

(h) Predicated on the above, petitioner alleged that respondent no.1 does not have any *bona fide* intention to use the mark and the present impugned registration has been obtained only as a paper registration with *malafide* intention to hijack the word "SHAKTI", and dilute the reputation of the petitioner's well-reputed and celebrated trademark "SAKTHI".

(i) Alleging violation of Sections 9, 11, 18 and 47, 57 of the Act, the present petition seeking removal of the impugned mark "SHAKTI" from the Register of Trade Marks, has been filed.

CONTENTIONS ON BEHALF OF THE PETITIONER:-

3. Mr. Kumar Sudeep, learned counsel for the petitioner would submit that the petitioner is an established manufacturer and seller of food products including spices and masala powders, pickles, edible oils, flour, and papad. It is stated that the said products are manufactured and sold under the trademark "SAKTHI", and its variants exclusively and extensively since the year 1977. Petitioner claims that the marks are registered in several classes including 65



2026:DHC:5159



registrations in Class 30 alone, and the oldest of such registrations is of the year 1979 with a user detail of the year 1977. Petitioner also claims to have numerous copyright registrations and foreign registrations for its marks.

4. Learned counsel submitted that the impugned mark “SHAKTI” is registered under Registration No.701410 in Class 30 in favour of respondent no.1 under the certificate dated 22.05.2018. Learned counsel submitted that the respondent no.1 was arrested in some cases, and subsequently enlarged on bail, and his company M/s Shakti Bhog Foods Limited is under liquidation.

5. It is stated that the petitioner had filed an opposition against the impugned mark before the Trade Marks Registry, however, the said opposition was dismissed, according to the learned counsel, merely on procedural grounds. Subsequently, the petitioner filed the present rectification before the Intellectual Property Appellate Board (hereafter referred to as “IPAB”), which eventually came to be transferred to this Court.

6. Learned counsel for the petitioner addressed arguments topic-wise which are noted hereunder:-

I. The non-use of impugned mark:-

7. Learned counsel for the petitioner contended that though the respondent no.1 has claimed user of the mark “SHAKTI”, however, the same is unfounded as no documentary evidence corroborating the said contention has been placed on record by respondent no.1. It was contended that there is no *bona fide* use of the impugned mark either by respondent no.1 or by anyone authorized by them apart from the fact that respondent no.1 does not have any *bona fide* intention to use the said impugned mark in respect of class of goods



2026:DHC:5159



for which it was registered. In other words, it is contended that the said registration has been obtained only as a paper registration with an intention to hijack the word “SHAKTI”, which is a phonetic equivalent of the petitioner’s prior adopted and registered trademark “SAKTHI”. On the aforesaid basis, it was contended that the said impugned mark is liable to be expunged from the Register of Trade Marks under Section 47(1)(a) of the Act.

8. Learned counsel also contended that respondent no.1 applied for the registration of the impugned mark without any use in respect of the goods described under Class 30. Learned counsel stated that there is nothing on record to demonstrate that the respondent no.1 has used the mark subsequent to the date of application i.e.12.03.1996 for goods under Class 30 for a continuous period of five years. He would also submit that till three months prior to the present rectification petition, the respondent no.1 did not use the impugned mark for the goods under Class 30 for a continuous period of five years, and therefore, the said mark is liable to be removed from the Register of Trade Marks under the provisions of Section 47(1)(b) of the Act.

9. Learned counsel also contended that the use of the mark “SHAKTI” by respondent no.1 is liable to be removed for the reason that it is capable of causing confusion among the trade circles and the consuming public. He contended that the impugned mark has been registered with the sole intention of hijacking the word “SHAKTI”, and simultaneously diluting the goodwill and reputation garnered by the petitioner in respect of the mark “SAKHTI”. He reiterated that the said registration is a mere paper registration with no intention to put it to use. Thus, according to him, the impugned mark wrongly



2026:DHC:5159



remains in the Register without any sufficient cause, and is thus liable to be removed as per Section 57(2) of the Act.

10. Additionally, learned counsel submitted that the corresponding paragraphs in the reply to the grounds raised in the petition (Form-1) are silent regarding any use of the impugned mark. In fact, he would contend that there is not a single assertion that the impugned mark “SHAKTI” has ever been used at all. Therefore, not only for the lack of evidence, but also for non-traverse of the contentions and grounds raised by the petitioner by the respondent no.1 or even respondent no.3, the impugned mark is liable to be removed under Section 47 of the Act.

II. Registration of the mark is violative of Section 9 and 11 of the Act:-

11. Learned counsel contended that the mark of the petitioner “SAKTHI” has been used by the petitioner since the year 1977, and was registered in the year 1979. He would contend that the said mark is being used continuously and uninterruptedly by the petitioner since then till date. He would also contend that in the last almost 50 years of the existence of the trademark of the petitioner, it has gathered substantial goodwill and reputation for the high quality products manufactured and sold by the petitioner under the said mark. Thus, according to him, the mark of the respondent no.1 being structurally, phonetically and conceptually being identical or similar, is in clear violation of Sections 9(1)(a), 9(2)(a), 11(1), 11(2), 11(3) and 11(10) of the Act. Therefore, the registration of the impugned mark being contrary to the law deserves to be struck off from the Register of Trade Marks.



2026:DHC:5159



12. Learned counsel contended that the respondent no.1 cannot claim any right as owner of the impugned mark under Section 18 of the Act as in the past, in the opposition proceedings initiated by the respondent no.1 against the petitioner's application under no.1006557 for the mark "SAKTHI TOOR DHALL" under Class 30, the Registrar/respondent no.2 had categorically held *vide* order dated 26.06.2009 that the respondent no.1 has not been able to prove use of its mark "SHAKTI BHOG", and accordingly, rejected the opposition proceedings. As against this, learned counsel would contend that the respondent no.2 has now committed an error by registering the mark "SHAKTI" in favour of respondent no.1. Based on the aforesaid contention, learned counsel would contend that the impugned mark is liable to be removed from the Register of Trade Marks being violative of Sections 18 and 57 of the Act.

III. Respondent no.3 has no locus standi:-

13. Learned counsel would contend that respondent no.3 has no locus, however, was arrayed as a party *vide* order dated 15.01.2025. He would contend that respondent no.3 has predicated its impleadment in the present petition by virtue of an alleged Assignment Deed dated 30.12.2017, however the said Assignment Deed purportedly grants alleged assignment only of the mark "SHAKTI BHOG" to respondent no.3, and is conspicuous by the absence assignment of the mark "SHAKTI", which is the subject matter of the present petition. He would contend that a party may be entitled to use of a mark provided the same has been conferred by virtue of an assignment in writing as provided by Section 2(1)(b) of the Act. Thus, having regard to the



2026:DHC:5159



fact that there is no mention, even remotely, to the mark “SHAKTI” being assigned to respondent no.3, respondent no.3 has no jurisdiction or authority or locus to oppose the present petition. Learned counsel reiterates that the purported registration certificate for the mark “SHAKTI” is in the name of respondent no.1, which has not been assigned to respondent no.3. Therefore, the respondent no.3 would have no locus to oppose the petition of the petitioner in respect of the mark “SHAKTI”.

IV. Other issues:-

14. Learned counsel further contended that the alleged claim of use of impugned mark “SHAKTI” is neither honest nor concurrent nor are there any special circumstances in favour of respondent no.3 to claim protection under Section 12 of the Act. He would contend that demonstrably the respondent no.3 has failed to place on record any evidence to establish use of the said mark “SHAKTI” in the last atleast 21 years. Thus, in the absence whereof, the protection under Section 12 of the Act cannot get extended to respondent no.3. He further contended that there is a long history of litigation between respondent no.1 and the petitioner. In fact, it is stated that the petitioner had filed an opposition to the application under no.701410 of the impugned mark “SHAKTI” before the Trade Marks Registry, and thereafter, the present rectification petition has also been filed. According to learned counsel, the aforesaid facts would establish that the petitioner had never acquiesced to the use of impugned mark “SHAKTI” by any party. Accordingly, he contended that the impugned mark is not even protected under the provisions of Section 33 of the Act.



15. So far as, the trademark certificate bearing registration no.472286 placed on record by the respondent no.3 to claim prior adoption of the mark “SHAKTI BHOG ATTA” by the alleged predecessor in 1975 is concerned, learned counsel contended that the said document is *ex facie* suspect and unreliable.

16. He would contend that while the computer printout at page 5 indicates the date of application as 01.04.1975 whereas, the copy of the actual certificate for the said mark on page 7 shows the date of application to be 15.05.1987. Thus, according to learned counsel, the said documents being contrary to each other cannot be permitted to be relied upon by respondent no.3 to predate the use of the mark “SHAKTI BHOG ATTA”. Notwithstanding the said submission, learned counsel would contend that in any case the alleged registration pertains to the mark “SHAKTI BHOG ATTA”, and not the impugned mark “SHAKTI”, which are two different and separate marks, and cannot be considered as depicting one registered mark as being sought to be conflated by the respondent no.3.

17. Predicated on the above, learned counsel would pray that the impugned mark “SHAKTI” be expunged/removed from the Register of Trade Marks forthwith.

CONTENTIONS ON BEHALF OF THE RESPONDENT NO.3:-

18. Appearing for the respondent no.3 Mr. Grover, learned counsel gave a brief background of the case of the respondents.

19. He submitted that on 01.04.1975 the trademark “SHAKTI BHOG” was adopted by Kumar Dal Mills (“KDM”) in proof whereof the respondent



2026:DHC:5159



placed on record certain old newspaper advertisements with invoices as also the status page of the mark “SHAKTI BHOG” under no. 391844 in Class 30 submitted on 16.06.1982. It is stated that, in the year 1990, Mr. Kewal Krishna Kumar/respondent no.1 took over as proprietor of KDM upon retirement of other partners of KDM. In 1991, respondent no.1 incorporated respondent no.3 company as a group concern of KDM. While so, respondent no.1 applied for registration of the impugned mark “SHAKTI” in Class 30 on 12.03.1996 under no.701410. Respondent no.3 claims that respondent no.1 had executed a formal license dated 01.10.1996 in favour of respondent no.3 for the use of mark “SHAKTI BHOG” for a period of ten (10) years. It is claimed that the said license was extended for a period of thirty (30) years by virtue of the License Deed dated 03.04.2006. Subsequently, by the Assignment Deed dated 28.02.2007, respondent no.1 assigned registrations of the mark “SHAKTI BHOG”, and other variants in Classes 29, 30, 31, and 32 in favour of his own company M/s Shakti Bhog Foods Limited (“SBFL”).

20. It is stated that *vide* the Assignment Deed dated 30.12.2017, the company SBFL assigned all its rights acquired under the Assignment Deed dated 28.02.2007 from respondent no.1, in favour of respondent no.3 for a total consideration of Rs.14.10 Crores. It is stated that against the total consideration of Rs.14.10 Crores, an amount of Rs.13.5 Crores has already been paid, and Rs.50 lakhs were retained for want of original foreign registration certificates. As per Clause 2.3 of the Assignment Deed dated 30.12.2017, in case such foreign certificates are not handed over, no further amount was liable to be paid. It is claimed that pending applications were also



2026:DHC:5159



assigned to respondent no.3 in terms of Clause 10 of the said Assignment Deed.

21. Predicated on the above, Mr. Grover, learned counsel submitted that consequent upon execution of the Assignment Deed dated 30.12.2017, respondent no.3 executed fresh contracts/agreement with third-party contract manufacturers for manufacturing of the goods under the mark “SHAKTI BHOG”. He submitted that the invoices, etc. along with copies of invoices of advertisements initiated by respondent no.3 are placed on record on behalf of respondent no.3 as corroborative evidence to show use of the mark “SHAKTI BHOG” as its proprietor.

22. At the outset, Mr. Grover, learned counsel for respondent no.3 contended that the present petition under Section 47(1)(a) of the Act is not maintainable in view of the fact that respondent no.3 through its predecessor has all along been using the mark “SHAKTI” till date. He contended that in order to appreciate the manner in which respondent no.3 contends use of the mark “SHAKTI” at least from the year 1996 is predicated on the interpretation of Sections 15(1), 16, 17 and 55 of the Act.

23. Referring to Section 15 of the Act, Mr. Grover, learned counsel would contend that under the provisions of the said section, the proprietor of the mark is entitled to exclusive use of any part thereof separately for which purpose the said proprietor would be entitled to apply to register the whole and the part as separate trademarks. He next referred to Section 17 of the Act to contend that the said provisions provide that when a trademark consists of several matters, the registration thereof confers an exclusive right upon the



proprietor the use of the mark taken as a whole. Emphasizing on sub-section (2) of Section 17 of the Act, learned counsel further contended that the same is a non-obstante clause, which provides that if the said mark contains any matter which is common to the trade or is of a non-distinctive character, the registration of the whole shall not confer any exclusive right in the matter forming only that part of the whole.

24. Applying the aforesaid interpretations, learned counsel would contend that if the said interpretation is applied to the mark of respondent no.1 or respondent no.3 i.e. “SHAKTI BHOG”, the word “BHOG” can be stated to be common to the trade, and at the same time, is also of a non-distinctive character, thus, not conferring any exclusive right of respondent no.3 over the word “BHOG”. In other words, his contention was that the mark “SHAKTI BHOG”, viewed from the prism of the aforesaid interpretation, the exclusivity of respondent no.1 or respondent no.3 in the whole mark would be purely on the mark “SHAKTI”. In other words, learned counsel would contend that on a holistic and harmonious interpretation of Section 15 read with Section 17 of the Act, the registration of the mark “SHAKTI BHOG” of the year 1982 may be considered as registration of the mark “SHAKTI” alone. If so considered, the earliest use of the mark “SHAKTI”, as per the aforesaid interpretation would date back to 28.10.1995. Thus, the question of non-use under Section 47(1)(a) falls flat, and the petition ought to be dismissed.

25. Learned counsel next predicated his arguments on the provisions of Section 55 of the Act, particularly sub-section (2) thereof. He would contend that as per Section 55(2), the use of the whole of a registered trademark shall



2026:DHC:5159



be deemed to be also use of any trademark being part thereof, and registered in accordance with sub-section (1) of Section 15 of the Act in the name of the same proprietor. In other words, learned counsel would contend that the use of the mark “SHAKTI BHOG” from the year 1975 with user documents like invoices corroborating such use since 28.10.1995, ought to be deemed to be the usage of the mark “SHAKTI” since the word “BHOG” is common to trade or of non-distinctive character. He would contend that, looked at it either which way, in that, whether the interpretation urged in terms of Section 15 read with Section 17 or the same read in conjunction with interpretation to Section 55(2) of the Act, it is beyond cavil that respondent no.3 by itself or through its predecessor respondent no.1 has used the mark “SHAKTI” as a trademark for manufacture and sale of goods under Class 30. Therefore, the contention of the petitioner that there has been no use nor is there any document on record to establish use of the mark “SHAKTI” by respondent no.1 or respondent no.3 is absolutely unfounded, and ought to be rejected. He would contend that the petition being bereft of any merit in respect of non-use of the mark “SHAKTI” under Section 47(1)(a) or 47(1)(b) of the Act, ought to be dismissed with exemplary costs.

26. Learned counsel contended that the objection under Section 47(1)(b) is misconceived for the reason that the mark was registered on 22.05.2018, and the petition was filed on 08.04.2019, thus, a period of five years did not even elapse. Reliance in that regard was placed on *Rong Thai International Group Co. Ltd. v. Ena Footwear (P) Ltd., 2024 SCC OnLine Del 66.*



2026:DHC:5159



27. Mr. Grover, learned counsel would contend that respondent no.1 was a prior adopter of the mark “SHAKTI BHOG”, and thus, has superior rights in the said mark, whereas, the petitioner claims to have adopted the mark “SAKTHI” in the year 1977, which user has also not been proved on record. He would contend that in any case respondent no.1 was an honest and concurrent user of the mark, and in support thereof reliance is placed on *London Rubber Co. Ltd. v. Durex Products Incorporated, 1963 SCC OnLine SC 223*.

28. Learned counsel would contend that the objections raised under Sections 9, 11(1) and 11(3) of the Act are misconceived as the rival marks are used for different products, which use is not likely to cause confusion and deception. Reliance is placed on *Nandhini Deluxe versus Karnataka Cooperative Milk Producers Federation Ltd.- 2018 9 SCC 183*. He further contended that the petitioner has utterly failed in establishing or even demonstrating even a single instance of confusion amongst the mark or any dilution at all.

29. Learned counsel also contended that the goodwill of the petitioner has to be established, proved and reckoned on the date when respondent no.3 adopted the mark. He would submit that none of the invoices filed on record by the petitioner establish that the mark “SAKTHI” was in use at least till the year 2010. All the earlier invoices from the year 1994 of the petitioner only displayed its trade name, and not the mark. Even the invoice dated 08.01.2010 for the first time displayed the mark “SAKTHI” only as a mark, and not against any product mentioned therein. Thus, there is no proof on record to



2026:DHC:5159



demonstrate any use of the mark “SAKTHI” by the petitioner. To the contrary, respondent no.3 through respondent no.1 has demonstrated the use of the mark “SHAKTI BHOG” since the year 1995 at least.

30. Predicated on the above, learned counsel contends that the adoption of the mark “SHAKTI” being honest, concurrent and *bonafide*, the registration under no.701410 in Class 30 is entitled to remain on the Register of Trade Marks. He prays that the present petition be dismissed.

REJOINDER OF THE PETITIONER:-

31. To the argument of respondent no.3 based on the interpretation to the provisions of Section 15 read with Section 17 in conjunction with Section 55(2) of the Act, learned counsel contended in rejoinder that the impugned mark “SHAKTI” does not independently satisfy the requirements of the trademark registrations, and thus, does not fall within the provisions of Section 15(2) of the Act, and the interpretation sought to be projected is completely erroneous and misreading of the provisions of the aforesaid sections. He would contend that the mark of the petitioner i.e. “SAKTHI” has been present on the Register of Trade Marks for more than 45 years, and as such, if the said interpretation is agreed to, it would be contrary to the validity of the registration of petitioner’s mark under Section 18 of the Act. Additionally, learned counsel reiterated that the mark “SHAKTI” *per se* has never been used either by the respondent no.1 or respondent no.3 till date, and thus, the covering of the said lacunae by giving convoluted interpretation to the sections of the Act, cannot by itself, fulfill the actual lack of use of the mark “SHAKTI”. Thus, the interpretation is not sustainable.



ANALYSIS AND CONCLUSION:-

32. This Court has heard the arguments of Mr. Kumar Sudeep, learned counsel for the petitioner, and Mr. Grover, learned counsel for the respondent no.3, and perused the record.

33. So far as the arguments of Mr. Grover in respect of the interpretation of Section 15 read with Section 17 in conjunction with Section 55(2) is concerned, this Court would deal with the same in a while.

34. At the outset, it needs to be noted that the petitioner obtained its registration on 05.01.1979 with a user detail of 02.03.1977 for the mark "SAKTHI" for products under Class 30. Though the petitioner claimed usage of the said mark since the year 1977, however, the first invoice is dated 07.04.1994 indicating the use of the trade name "Sakthi Trading Company". Same is the situation with respect to the invoice dated 20.04.1996. It may be pertinent to note that the respondent no.1 had applied for the registration of the mark "SHAKTI" on 12.03.1996. What may be the effect of this, shall be considered and adverted to, in the later paragraphs. It is for the first time in the invoice dated 08.01.2010 that the trademark of the petitioner "SAKTHI" was displayed. This is reflected in the subsequent invoices too. Thus, on the record of this Court, the first invoice demonstrating the use of the mark "SAKTHI" by the petitioner is the invoice dated 08.01.2010.

35. As against this, the respondent no.1 had applied for registration of its mark "SHAKTI BHOG" (word mark) on 16.06.1982 with a user detail of 01.04.1975, which was registered on 28.04.1989 for products under Class 30. On record, the respondent no.1 and respondent no.3 have placed multiple



2026:DHC:5159



registrations of the mark “SHAKTI BHOG”, and formative marks with variants in the later years. There is no controversy in respect to the same. However, so far as proof of use of the mark is concerned, respondent also has placed on record invoices, the first dated 28.10.1995 and upto the year 2022. Respondent no.3 has also placed on record invoices pertaining to the promotional expenses, ostensibly for the advertisement of its products sold under the mark “SHAKTI BHOG ATTA”. Significantly, respondent no.1 or for that matter respondent no.3 has not placed on record even a single invoice or any proof of use of the mark “SHAKTI”, though, it is claimed that the mark was applied for registration on 12.03.1996. In the last many years till the present rectification was filed, there is no such proof adduced by respondent no.1 or respondent no.3. In fact, neither respondent no.1 nor respondent no.3 has produced any invoice even after 22.05.2018 when the mark “SHAKTI” was finally registered.

36. In contradistinction thereto, the petitioner has placed on record all its registrations, Indian, and of other foreign jurisdictions for the mark “SAKTHI” for various products in Class 30. Although the mark “SAKTHI” was originally registered as a device mark on 05.01.1979 with user detail of 02.03.1977, the petitioner has placed on record the word mark registrations too. This clearly contradicts the argument of the respondent no.3 that the petitioner only has a device mark registration. This is clear from the table below:

S. no.	Trademark no.	Word mark	Pg. no. in petition	User date in TM
1.	851811	SAKTHI HONEY	65	—



2026:DHC:5159



2.	851813	SAKTHI DHALL POWDER	69	01.04.1985
3.	851815	SAKTHI BISCUITS	73	—
4.	851817	SAKTHI BREAD	75	—
5.	851820	SAKTHI SWEETS & CONFECTIONARY	79	—
6.	851821	SAKTHI SAVOURIES	81	—
7.	851824	SAKTHI RAVA DOSAI MIX	85	31.12.1977
8.	851826	SAKTHI BADAM MIX	89	—
9.	851825	SAKTHI RAGI MALT	87	—
10.	851827	SAKTHI VATHAL & VADAMS	91	—
11.	851828	SAKTHI ASAFOETIDA	93	—
12.	851829	SAKTHI RAGI VADAI MIX	95	31.12.1977
13.	851830	SAKTHI MURUKKU MIX	97	31.12.1997
14.	851832	SAKTHI PAYASAM MIX	99	—
15.	878077	SAKTHI VERMICELLI	101	—
16.	878078	SAKTHI CORN FLAKES	103	—
17.	878082	SAKTHI CHUTNEY	109	—
18.	878083	SAKTHI COFFEE	111	Proposed to be used
19.	878084	SAKTHI MENTHI	113	—
20.	878085	SAKTHI PEPPER	115	—
21.	878086	SAKTHI CHILLI	117	—
22.	878087	SAKTHI MUSTARD	119	—
23.	878088	SAKTHI CUMIN	121	—
24.	878094	SAKTHI SOUFF	127	—
25.	878095	SAKTHI POPPY SEED	129	—
26.	878096	SAKTHI CONDIMENTS	131	—
27.	878097	SAKTHI CARDAMOM	133	—
28.	878099	SAKTHI TURMERIC	137	—
29.	878103	SAKTHI (FOR EXPORTS)	141	—
30.	992872	SAKTHI DIET	160	01.07.2000
31.	992874	SAKTHI ACTIVE	163	01.07.2000



2026:DHC:5159



37. Even if this Court eschews the invoices brought by the petitioner prior to the invoice dated 08.01.2010 on the ground that they referred only to the trade name, and not to the mark “SAKTHI” specifically, even then there is tangible proof of use of the mark “SAKTHI” by the petitioner at least since 2010. Whereas, as observed above, there is no such proof or evidence of use of the mark “SHAKTI” by either respondent no.1 or respondent no.3 on record. Thus, on facts, it is clear that the petitioner is not only the prior registrant of the mark “SAKTHI”, but also the prior user.

38. A relevant consideration at this stage would be the opposition proceedings initiated by the respondent no.1 against application for registration of the mark “SAKTHI TOOR DHALL” under no.1006557 dated 30.04.2001 in relation to Class 30. It appears that the Registrar had by the order dated 26.06.2009, rejected the opposition notice of respondent no.1, and allowed application of the petitioner which proceeded for registration. It appears that the respondent no.1 did not challenge the said registration anytime subsequently. The reasoning may be relevant to appreciate the controversy in the present case. The relevant paragraphs of the order dated 26.06.2009 is reproduced hereunder:

“I have considered the submissions of both the parties and gone through the records. The Applicants have shown their user pertaining to trade mark SAKTHI in respect of TOOR DHALL since 19.4.1989 by producing various evidences filed along with affidavit under Rule 51 in support of his contentions. The applicants have furnished sales figures from the year 1995-96 to 2005-2006. On the other hand, the opponents have furnished sales turnover for the year 1975-76 to 1993-94 in the name of M/s Kumar Dhal Mill and 1996-97 to 2000-01 in the name of M/s Shaktibhog Foods Ltd. and M/s Kumar Food Industries Limited. The Opponents have filed invoice



2026:DHC:5159



copies from the year 1988 to 2003 in respect of their trade mark SHAKTIBHOG according to the evidence filed by them and these are also pertaining to goods ATTA only. The user claimed by the opponents in these proceedings is not established properly. I also go with the applicant's have stated in their affidavit M/s SHAKTI BHOG FOODS LIMITED and M/s KUMAR FOOD INDUSTRIES are Licensee of their company and now they filed a request on Form TM-16 that the trade mark SHAKH BHOG has been assigned to M/s SHAKHBHOG FOODS LIMITED which are quite contradictory. All these circumstances shall lead to a conclusion that the opponents have come with unclean hands before this Tribunal. The evidence filed by the Applicant itself substantiate their claim of the use in relation to the trade mark SAKTHI and they are the proprietors of the trade mark SAKTHI under Section 18 of the Act. It is very clear from the evidence filed by the applicants and the arguments adduced by the applicant's counsel that they are the proprietors of the trade mark SAKTHI since the year 1977 continuously and extensively without any interruption from any source. Therefore, the Applicant can claim the proprietary rights in the impugned mark 'SAKTHI' and the present opposition is filed just to delay the proceedings of registration of the impugned mark without any sustainable ground and the same is devoid of any merit.

On consideration of overall facts and circumstances of the case, this Tribunal is of the view that the Opponents have failed to substantiate any of their objections to the registration of the impugned mark as raised in the notice of opposition in terms of Sections 9, 11, 12 & 18 of the Act and hence none of their objections can be sustained and is hereby ordered accordingly. Also there is no justifiable reason or circumstance to exercise my discretion adverse to the Applicants under Section 18(4) of the Act as prayed for by the Opponents.

In view of the foregoing, the application No. 1006557 In Class-30 is allowed with costs and consequently, the opposition No.MAS-191672 is dismissed. The applicants are entitled to a cost of Rs.3500/- (Three Thousand Five Hundred only) of these proceedings.

Sealed and signed at Chennai on 26.6.2009.”



2026:DHC:5159



39. It is pertinent to note that respondent no.1 did not further challenge the order dated 26.06.2009, and thus, this circumstance would surely weigh against respondent no.3. For that matter, even respondent no.3 never assailed the said order despite claiming to have been assigned the mark “SHAKTI BHOG” by respondent no.1 *vide* the Assignment Deed dated 30.12.2017.

40. In the meanwhile, the respondent no.1 had applied for registration of the mark “SHAKTI” under no.701410 dated 12.03.1996 in relation to products under Class 30 which is the impugned registration. The petitioner appears to have objected to the said application by initiating opposition proceedings, however, on account of not having filed evidence, the proceedings culminated into registration of the impugned mark. The petitioner did not accept the same, and assailed such registration by filing the Original Application No.39/2019/TM/DEL before the IPAB. After the abolition of the IPAB, the said application was transferred to this Court, and re-numbered as the present petition. Thus, it is evident that the petitioner on its part continued to oppose the registration of the mark “SHAKTI” from the time it gained knowledge till date.

41. Having regard to the aforesaid observations, factual analysis and bearing in mind that despite having applied for the mark “SHAKTI” on 12.03.1996, and it being finally registered on 22.05.2018, it is astounding to note that there is not even a single scrap of proof, documentary or otherwise, placed on record by either respondent no.1 or respondent no.3 to establish, demonstrate or corroborate the contention that the said mark has been used in the past. Equally, there is nothing placed on record to establish use of the



2026:DHC:5159



impugned mark by either respondent no.1 or respondent no.3 in three months before the application as per Section 47(1)(a) of the Act. Apart from the impugned registration of the mark “SHAKTI”, the respondent no.1 and respondent no.3 have not placed any tangible proof of its use, ever.

42. Equally, on the basis of the same observations and analysis, it can safely be inferred that the impugned mark was registered without any *bona fide* intention on the part of respondent no.1 or respondent no.3 to use the mark in relation to the goods or services for which it was registered. The onus to demonstrate or establish *bona fide* intention was upon respondent no.1 and respondent no.3, jointly, which they have failed to discharge. The initial onus to *prima facie* demonstrate non-use or lack of intention to use has been discharged by the petitioner by asserting the same, and also evidencing its opposition to the registration. While in one case, the petitioner succeeded in the opposition proceedings initiated by the respondent no.1, culminating in the order dated 26.06.2009 of the Registrar allowing the registration of the mark “SAKHTI”, in the other, the petitioner did not complete the requirements in its opposition proceedings leading to the registration of the impugned mark. However, consequent to the filing of the present rectification petition, it was the requirement of respondent no.1 and respondent no.3 to evidence, by proper and tangible documentary proof, not only the *bona fide* intention to use, but simultaneously establish such use by filing invoices, etc., to show use of the mark “SHAKTI” in respect of products manufactured in relation to Class 30. The facts and the material on record placed by respondent no.1 and respondent no.3 do not instil any confidence in respect of



2026:DHC:5159



the requirements under Section 47(1)(a) of the Act, and this Court concludes that respondent no.1 and respondent no.3 have failed to discharge the said onus.

43. That said, this Court is of the opinion that no case under the provisions of Section 47(1)(b) of the Act has at all been made out. Undeniably, the impugned mark was registered on 22.05.2018, and was entered into the Register of Trade Marks consequent thereto. Whereas, the present petition was filed by the petitioner on 08.04.2019, which falls foul of the requirement under Section 47(1)(b) of the Act. Thus, the petition fails to that extent. Though, it is a matter which can be noticed that respondent no.3 while claiming rights over the application seeking registration of the impugned mark, in terms of Clause 10 of the Assignment Deed dated 30.12.2017 executed in its favour by SBFL, has not placed any document to evidence use of the mark “SHAKTI”, even subsequent to the registration of the mark in the year 2018 or the filing of the present petition.

44. At this stage, it may be relevant to consider the arguments of respondent no.3 based on protection conferred by provisions of Section 12 of the Act for “honest concurrent use”. As observed above, nothing has been placed on record by respondent no.1 or respondent no.3 to evidence and corroborate use of the mark from 12.03.1996, or either before or even at anytime subsequent thereto, and therefore, in the considered opinion of this Court, the question of “honest concurrent use” does not arise in the facts of the present case. It needs emphasis that for an entity or individual to seek protection under the provisions of Section 12 of the Act, it is imperative to



2026:DHC:5159



demonstrate, as a matter of fact, the actual use of the mark “concurrently” and “honestly” in respect of the goods or services in relation to the Class under which registration or protection is sought. Mere assertion, without any tangible evidence, shall not fulfill the requirements of Section 12 of the Act. Thus, even on this score, respondent no.3 is found wanting.

45. Another argument was addressed by learned counsel for the petitioner that respondent no.3 was not assigned the mark “SHAKTI” by respondent no.1 in the Assignment Deed dated 30.12.2017 and thus, respondent no.3 lacked locus to oppose the present petition. On the other hand, learned counsel for the respondent no.3 had categorically relied upon Clause 10 of the said Assignment Deed which provided that the assignee was further entitled to bring itself on record with respect to any pending trademark applications for the mark “SHAKTI BHOG” or its variants, in case it so desires. On the strength of the said clause, respondent no.3 claims locus to oppose the petition. He also relied upon the judgement of this Court in *Sun Pharmaceuticals Industries Ltd. v. Cipla Ltd., 2008 SCC OnLine Del 1135* for the said proposition.

46. This Court has also considered the terms of Clause 10 of the Assignment Deed dated 30.12.2017. The said clause unequivocally permits and grants permission to respondent no.3-the assignee to bring itself on record in respect of any pending trademark applications for the mark “SHAKTI BHOG” or its variants. It is relevant to note that the words “its variants” must be construed widely to include the mark “SHAKTI” which was applied for on 12.03.1996, and was still pending consideration by the Trade Marks Registry,



2026:DHC:5159



and the registration was finally granted on 22.05.2018. It may be noted that the Assignment Deed was executed on 30.12.2017 on which date the application for registration of the mark “SHAKTI” was still pending. Thus, it cannot be said that respondent no.3 has no locus to oppose the present petition seeking removal of the mark “SHAKTI” from the Register of Trade Marks.

47. That said, on law, learned counsel for respondent no.3 had tendered a very interesting and captivating argument on the interpretation of Section 15 read with Section 17 in conjunction with Section 55(2) of the Act. Learned counsel would have this Court believe that the usage of the mark “SHAKTI BHOG” must be interpreted to mean the usage of the prominent mark “SHAKTI” as the word “BHOG” is, either common to trade or non-distinctive, and since there is no exclusivity available with the respondent no.3 over the word “BHOG”, the use of the composite word “SHAKTI BHOG” ought to be deemed to be use of the mark “SHAKTI”. Viewed from that prism, the use of the mark “SHAKTI” ought to be deemed from the year 1982 when the mark “SHAKTI BHOG” was registered with user detail from 01.04.1975 or at the least from 28.10.1995, the date of the earliest invoice placed on record by respondent no.3 in proof of sale of goods under the mark “SHAKTI BHOG” for the products manufactured in relation to Class 30.

48. Although, the aforesaid argument is not only attractive but also captivating and plausible. However, in the opinion of this Court, the said interpretation, even if accepted, cannot be applied to the facts of this case. This is for the reasons that (i) an identical mark “SAKTHI” for Class 30 goods was applied for by the petitioner on 30.04.2001 under no.1006557 and



2026:DHC:5159



allowed by the Registrar, and that too, after the consideration of the objections and opposition proceedings initiated by the respondent no.1 and rejected by order dated 26.06.2009 which was never challenged, and (ii) neither respondent no.1 nor respondent no.3 have been able to prove or establish by any tangible documentary proof the independent use of the mark “SHAKTI” either before applying for registration or any time subsequent thereto or even after registration of the impugned mark on 22.05.2018, and thus, the aid of interpretation cannot be employed in such a manner as to defeat the rights which may have accrued to the opposite party.

49. Another way of examining the said issue would be to understand that though such interpretation may be plausible, yet, it cannot be applied *dehors* the facts arising in a particular case. Having failed to produce any evidence of the use of the mark “SHAKTI” from 12.03.1996, the date of application seeking registration or 22.05.2018, when the mark was finally registered, falling back upon an interpretation which would forward the case of respondent no.3 and desiring the Court to render an opinion of deeming fiction, would be an exercise in futility for the reason that the facts in this case do not support the stand taken by the respondent no.3. Had respondent no.1 or respondent no.3 demonstrated by tangible evidence the use of the mark “SHAKTI”, possibly the Court would have been compelled to consider the interpretation as put forward by learned counsel for the respondent no.3. Having failed on facts, respondent no.3 cannot plead legal interpretation to come to its aid.



2026:DHC:5159



50. As such, though learned counsel for respondent no.3 placed a brilliant and novel interpretation to Sections 15, 17 and 55 of the Act, this Court is not ready to accept such interpretation, keeping in view the facts of the case. Resultantly, the said argument is found to be unpersuasive.

51. This Court has also examined the rival marks i.e. the trademark “SAKTHI” of the petitioner, and the impugned mark “SHAKTI” of respondent no.1 and respondent no.3, and finds both the marks phonetically and structurally identical to each other. In fact, the placement of the letter ‘H’ in the mark of the petitioner or the mark of respondent no.1 at different places really does not make any difference since both marks are phonetically similar and convey identical meaning i.e. “power”, “energy” or “ability”. It may also be kept in mind that the parties are manufacturers of products falling within Class 30. Thus, there is every likelihood of a general consumer with average intelligence and imperfect recollection to get confused or deceived into believing the goods of respondent no.1 and respondent no.3 as those of the petitioner. Even otherwise, as held above, the petitioner has been able to demonstrate, by placing tangible evidence on record, that it has been consistently using its mark “SAKTHI” from the last many decades. While respondent no.1 and respondent no.3 have not been able to demonstrate any such usage of the mark “SHAKTI” in relation to the goods manufactured under Class 30. Thus, the mark “SHAKTI” of respondent no.1 and respondent no.3 cannot be permitted to continue to remain on the Register of Trade Marks.



2026:DHC:5159



52. Learned counsel for respondent no.3 had relied upon the judgement of this Court in *Rong Thai (supra)* to contend that the petition is not maintainable for the reason that while the impugned mark was registered on 22.05.2018, the present petition under Section 47(1)(b) of the Act was filed on 08.04.2019, and thus, a period of five years had not elapsed. It may be noted that in the aforesaid paragraphs, this Court has also concluded that a case under Section 47(1)(b) is not made out, however, since this Court has found that a case against respondent nos.1 & 3 under Section 47(1)(a) of the Act has been made out, the petition otherwise would be maintainable. Thus, the judgement of *Rong Thai (supra)* may not be applicable.

53. Learned counsel for respondent no.3 had also relied upon the judgement of the Supreme Court in *London Rubber Co. Ltd. (supra)* in order to support his contention that the impugned mark has been correctly registered and rightly entered in the Register of Trade Marks on account of “*honest and concurrent use*” under the provisions of Section 12. This Court has perused the judgement in *London Rubber Co. Ltd. (supra)*, and finds that on facts, there is a clear distinction from those arising in the present case. While in *London Rubber Co. Ltd. (supra)* the Registrar of Trade Marks as a matter of fact, had found that the respondent therein i.e. Durex Products Incorporated was using the mark “Durex” from the year 1928, while the appellant had filed its application in the year 1946, and the mark “Durex” was registered in the appellant’s name in the year 1951. It appears that subsequently the respondent had applied for registration of the mark “Durex”. The Registrar after having appreciated the evidence placed on record by the



respondent of prior user of the mark “Durex” from the year 1928, registered the said mark too in favour of the respondent on the basis of “*honest and concurrent use*” of the mark in question in the said appeal. However, in the present case, this Court has recorded a finding that there is no documentary proof or tangible evidence demonstrating the use of the mark “SHAKTI”, by either respondent no.1 or respondent no.3 from the date of application i.e. 12.03.1996 till the date of registration i.e. 22.05.2018 or even subsequently. Thus, respondent no.3 has failed to prove “honest” and “concurrent” use. Therefore, the ratio laid down in *London Rubber Co. Ltd. (supra)* would not be applicable to the facts of the present case.

54. Learned counsel also relied upon the judgement of the Supreme Court in *Nandhini Deluxe (supra)* to contend that the objections under Sections 9, 11(1) and 11(3) of the Act are misconceived as the rival marks are used for different products and therefore, there is no likelihood of confusion or deception. The ratio of the said judgement would not be applicable to the facts of the present case in as much as it is undisputed that both parties manufacture and sell goods falling within the same class i.e. class 30 and therefore, there is every likelihood of confusion and deception.

55. In view of the finding that the provisions of Section 47(1)(a) have been violated, this Court is of the considered opinion that the mark “SHAKTI” registered on 22.05.2018 in the name of respondent no.1 under no.701410 dated 12.03.1996 ought to be expunged and removed from the Register of Trade Marks. It also appears from the aforesaid observations that the entry has been made without sufficient cause and wrongly remains on the Register



2026:DHC:5159



of Trade Marks which would fall foul of the provisions of Section 57(2) of the Act.

56. Accordingly, respondent no.2 is directed to cancel and remove the mark “SHAKTI” registered on 22.05.2018 in the name of respondent no.1 under no.701410 dated 12.03.1996 from the Register of Trade Marks. The said exercise be carried out within four (4) weeks from the date of receipt of this order.

57. Petition is disposed of alongwith pending applications, if any, with no order as to costs.

**TUSHAR RAO GEDELA
(JUDGE)**

JUNE 24, 2026*/anj/rl*