

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL MISCELLANEOUS PETITION (L) NO.17853 OF 2025

Aravind Laboratories

...Petitioner

Versus

1. Manoj Agrawal

2. The Registrar of Trade Marks

...Respondents

Ms. Gladys Daniel, a/w Mahesh Mahadgut, Kaivalya Shetye, Kalyani Paunikar for the Petitioner.

None for Respondent No.1.

Digitally
signed by
ASHWINI
JANARDAN
VALLAKATI
Date:
2026.07.28
11:21:55
+0530

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : July 16, 2026

Judgement:

1. The captioned Petition is essentially an Application seeking rectification of registration invoking Sections 47 and 57 of the Trade Marks Act, 1999 (“***the Act***”). The Petitioner, Aravind Laboratories, assails a device mark registered by Respondent No.1, Manoj Agrawal, using the word “DIVYAM” (bearing No.4615334) as its essential feature, in respect of goods under Class 3 (“***Impugned Mark***”). The Impugned Mark has the name “DIVYAM” written in a distinctive style with the letter “I” resembling a flame. The device mark has a footnote under the word DIVYAM, indicating the words “*Your Complete Divinity Store*”.

2. The description of the goods for which the Impugned Mark is to be put to use refers to manufacturing and trading of Dhoop Batti, Agarbatti, Havan Samagri, Poojan Samagri, Dry Dhoop Stick (All Poojan Goods), Mehendi Fragrance And Perfumes, Turmeric, Kumkum, Pooja Oil, Pooja Ghee, Ganga Jal, Chandan and Chandan Paste, Vibhooti and all other pooja goods packed for pooja purposes.

3. The Petitioner is a registered proprietor of various trademarks including word marks, device marks and labels, all linked to the word “EYETEX” as the prefix. One of the marks so registered is a word mark bearing registration number 527085 for the words “EYETEX DIVYA”. The EYETEX DIVYA mark was registered on March 29, 1990, also in Class 3, and description of goods essentially is liquid Kumkum and Kumkum in the form of paste, powder and sticker forms. The usage of EYETEX DIVYA is said to relate back to October 1, 1989.

4. Service of notice of the rectification proceedings has been attempted on multiple occasions at the address set out in the Registrar's records as the address of Respondent No.1. A Learned Single Judge of this Court was pleased to permit substituted service by an order dated November 13, 2025, after which, the service affidavit dated December 4, 2025, demonstrating substituted service, was taken on record. Eventually, the matter has come up

for consideration today. In view of substituted service already having been permitted, and in view of completion of service as permitted, the matter was finally taken up *ex parte* today, since none is present on behalf of Respondent No.1.

5. I have heard Ms. Gladys Daniel, Learned Advocate on behalf of the Petitioner, who has taken me through the material on record. It is apparent that “EYETEX DIVYA” has been registered way back in 1990 and that trademark is used in connection with various forms of Kumkum, including liquid Kumkum and Kumkum in the form of paste, powder and sticker forms. The overall turnover of the Petitioner which is set out by way of a Chartered Accountant's certificate is claimed to be in the region of Rs. 275.67 crores for the year 2022-23 while the advertisement and promotional expenses for that year were in the region of Rs.25.55 crores. These figures are the total revenues and expenditure of the Petitioner as a whole, not just attributable to "EYETEX DIVYA".

6. The long-standing use of “EYETEX DIVYA” in the trade is borne out by invoices appended to the Petition, which identify the Kumkum product as “Divya Kumkum” over the years, ranging from 2001 to 2024. Invoices in respect of expenditure on advertising in various forms of media as raised by an advertising agency are also appended to the Petition.

7. According to Ms. Daniel, the Petitioner's grievance is the confusion likely to be caused in the minds of consumers of average intelligence with imperfect recollection, namely, that the Kumkum that may be marketed using the Impugned Mark is that of the Petitioner and thereby enable the Respondent No. 1 to exploit the Petitioner's reputation and goodwill. Likewise, she contends that, even if the Petitioner is not into the manufacturing and marketing of Dhoop Sticks, Agarbattis and other such materials used for Havan, Pooja and such other rituals, the fact that the Petitioner's Kumkum is widely known, including for its application in purposes of pooja and other rituals, the market would presume that the Petitioner has now extended its branding to such other products, thereby undermining the reputation and goodwill of the Petitioner, protected by its long-standing registration.

8. That apart, Ms. Daniel also submits that despite registration, Respondent No. 1's trade mark has not actually been put to use. She would submit that the Petitioner has solemnly stated that despite best efforts, the Petitioner has not been able to find products using the registered DIVYAM mark anywhere in the market.

9. Ms. Daniel would submit that the registration itself ought not to have been granted. Despite vigilance, the Petitioner had missed the advertisement prior to the registration and thereby lost the opportunity to raise an opposition

to the registration. To summarise, Ms. Daniel would submit that the Impugned Mark is liable for cancellation because:

A] The Impugned Mark relies on the word DIVYAM, which is devoid of distinctive character, since it fails to distinguish the goods of Respondent No.1 from the pre-existing trade marks already registered and used in the market, thereby attracting the principles underlying Section 9(1)(a) of the Act;

B] In view of the deception and confusion that it is likely to be caused in the market, the Impugned Mark is liable to be rectified under the principles underlying Section 9(2)(a) of the Act;

C] The Impugned Mark being identical to the earlier marks used by the Petitioner much prior to Respondent No. 1, is liable to rectification attracting the principles underlying Section 11(1)(a) of the Act;

D] The Impugned Mark is liable to be restrained by a jurisdictional Court in terms of the law governing passing off under Section 11(3)(a) read with Section 11(10)(ii) since the Impugned Mark could never have been registered, and has indeed been registered in a *mala fide* manner; and

E] The non-use would attract Section 47 while the legitimate grievance of the Petitioner that the registered Impugned Mark would

inflict serious harm and injury on the Petitioner under Section 57 necessitates cancellation of the Impugned Mark.

10. Having heard Ms. Daniel and on examination of the record with her assistance, I am of the view that the request for rectification is not worthy of acceptance.

Implications of Section 17:

11. Effectively, Ms. Daniel's contentions are rooted in the premise that the registration of the word mark EYETEX DIVYA and its long-standing usage by the Petitioner and the generation of goodwill and reputation would grant the Petitioner a monopoly over the usage of any derivative of the word "DIVYA", although the Petitioner does not have "DIVYA" as a registered mark but instead its mark is "EYETEX DIVYA". It is well settled that when used in a particular combination, words that would otherwise individually not have a distinctive element deserving protection may derive a distinctive character when strung together in that combination.

12. The various marks registered by the Petitioner in India are set out in Paragraph 8 of the Petition, while the marks registered in foreign jurisdictions are listed in Paragraph 11 of the Petition. Not one of the 24 device marks listed in Paragraph 8 is without the prefix "EYETEX". The remaining part of these

marks other than “EYETEX” contains words such as Kumkum, Poornima, Aarti etc. The word marks listed in Paragraph 11 are also combined words, where a few do not entail “EYETEX”. There is no registration of “DIVYA”. It is evident that the dominant feature of the registered marks of the Petitioner is “EYETEX”. It is the combination in which the other words are used with “EYETEX” as the prefix, that makes the marks of the Petitioner distinctive. What the Petitioner now claims is a proprietary right to monopolise the use of variants of “DIVYA” on the strength of being the proprietor of the “EYETEX DIVYA” mark.

13. One has to be cautious not to permit monopolisation of generic words forming part of a distinctive combination with another dominant part that provides the real distinctiveness to the mark. Accepting the Petitioner’s request for cancellation would lead to just that. By that token, the Petitioner could then claim protection against anyone using any word to which the Petitioner has added the word “EYETEX” as a prefix. For example, the Petitioner could even claim a right to “Kumkum” and its variants as well, simply because it has registered “EYETEX KUMKUM” much like having registered “EYETEX DIVYA”. If this is accepted, it would lead to protection for a generic name prevailing for centuries for the red powder created from processing of turmeric.

14. It is well settled that the addition of a prefix or suffix cannot sanitise infringement – typically where an infringing party claims to have a wider and more expansive mark than the one registered, by simply adding a prefix, the aforesaid principle is deployed. However, in the instant case, the prefix “EYETEX” is contained in the registered mark of the Petitioner, which is seeking cancellation of another registrant’s device mark with the “DIVYAM” word being dominant in it, on the ground that the prominent word in the Impugned Mark is a variant of a generic part of the *Petitioner’s* registered mark. Ms. Daniel’s reliance on *Sun Pharma*¹ or *Pidilite*² to underscore the irrelevance of the addition of a prefix to save an infringing party’s mark is of no assistance to the Petitioner.

15. The provisions of Section 17 of the Act are noteworthy and are extracted below:

17. Effect of registration of parts of a mark.—

(1) *When a trade mark consists of several matters, its registration shall confer on the proprietor exclusive right to the use of the trade mark taken as a whole.*

(2) *Notwithstanding anything contained in sub-section (1), when a trade mark—*

(a) contains any part—

(i) which is not the subject of a separate application by the proprietor for registration as a trade mark; or

¹ *Sun Pharmaceutical Industries Ltd. Vs Satej M. Katekar and Others – 2026 SCC OnLine Bom 2681*

² *Pidilite Industries Ltd Vs Dubond Products India Pvt. Ltd. – 2024 SCC OnLine Bom 1390*

(ii) which is not separately registered by the proprietor as a trade mark; or

(b) contains any matter which is common to the trade or is otherwise of a non-distinctive character.

the registration thereof shall not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

[Emphasis Supplied]

16. A plain reading of the foregoing would show that under Section 17(1) of the Act, where a trade mark consists of several matters, its registration confers on the proprietor an exclusive right to the use of the trade mark taken as a whole, and under Section 17(2) of the Act, such a registration would not confer any exclusive right in the matter forming only a part of the whole of the trade mark so registered.

17. In the instant case, the Petitioner is entitled to “EYETEX DIVYA” as a whole, which is a peculiar combination of using “EYETEX” as a prefix to the generic word “DIVYA”. Like with all other registered marks of the Petitioner, it is the “EYETEX” prefix that gives the Petitioner’s marks distinctiveness and not the generic words such as “KUMKUM” or “DIVYA” or “POORNIMA”. The Petitioner cannot claim an entitlement to “DIVYA” and its variants such as “DIVYAM” on the strength of its registration and on the strength of its prior use of “EYETEX DIVYA”. Therefore, both under Section 17(2)(a) as well as

Section 17(2)(b), the Petitioner cannot claim protection against anyone using any variation of the word “DIVYA”.

Implications of Section 9:

18. Ms. Daniel would invoke Sections 9(1)(a) and 9(2)(a) of the Act. These provisions are extracted below:

9. Absolute Grounds for refusal of registration

(1) The trade marks –

(a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

*(b) and (c) ******

shall not be registered;

*PROVIDED that ******

(2) A mark shall not be registered as a trade mark if –

(a) it is of such nature as to deceive the public or cause confusion;

*(b) to (d) ******

[Emphasis Supplied]

19. I have already expressed my view on how the Impugned Mark is of a distinctive character since it is a device mark with a distinctive style in which the dominant word “DIVYAM” is depicted. The Impugned Mark is not a word mark but a specially stylised depiction of the word “DIVYAM” with an inherent flame and the footnote to it. Therefore, for the reasons already articulated above, I am of the view that the Impugned Mark cannot be said to be devoid of

distinctive character. The manner in which it is stylised and creatively structured, gives it the distinctiveness to make it stand out in a manner that would distinguish the goods sold using it. Therefore, Section 9(1)(a) of the Act would not cover the Impugned Mark on the premise that it does not have any distinctive character.

20. Likewise, there is nothing to indicate how the Impugned Mark is of such a nature that it would deceive the public or cause confusion. For the reasons articulated above, I have held that there is no scope for any confusion between the Impugned Mark and “EYETEX DIVYA”. Therefore, the reliance upon Section 9(2)(a) is of no relevance to accept the Petitioner’s contentions.

Implications of Section 11:

21. The Petitioner has also invoked Section 11(1)(a) and Section 11(10)(ii) of the Act. These provisions are extracted below:

11. Relative grounds for refusal of registration

(1) Save as provided in section 12, a trade mark shall not be registered if, because of—

(a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or

(b) *****

(2) to (9) *****

(3) A trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—

(a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or

(b) by virtue of law of copyright.

(10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall —

(i) *****

(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

[Emphasis Supplied]

22. As stated above, the identity of the Impugned Mark is distinct and not at all similar to the identity of “EYETEX DIVYA” merely because the dominant feature of the Impugned Mark is a stylised depiction of “DIVYAM” while the Petitioner has registered “EYETEX DIVYA”. Likewise, the goods in respect of which the Impugned Mark is sought to be used, all relate to products utilised in rituals and devotional offerings while the Petitioner’s market is in the field of cosmetics. That apart, by virtue of Section 17, the Petitioner cannot claim a monopoly over any variation of “DIVYA”, which is only a part of “EYETEX DIVYA”. Therefore, the reliance on Section 11(1)(a) is misplaced.

23. For the very same reason, the reliance on Section 11(3)(a) is misplaced since it cannot be said that the use of the “DIVYAM” device mark is a bid to pass off the goods marketed using that device as goods of the Petitioner.

24. The reliance on Section 11(10)(ii) is also misconceived. There is nothing to show bad faith in applying for registration of the Impugned Mark except for the Petitioner’s belief that it has a monopoly over all variations of “DIVYA” by virtue of having a registration of “EYETEX DIVYA” and because of references to “Divya Kumkum” in its operations.

Implications of Sections 47 and 57:

25. The Petitioner has contended that the alleged non-use by Respondent No. 1 warrants invoking Section 47 of the Act, and the serious injury that may be occasioned constitutes a grievance that makes the Petitioner a person aggrieved for purposes of Section 57. For the reasons set out above, in my view, the Petitioner cannot be regarded as having a legitimate grievance in order to be a person aggrieved for purposes of Section 47 or Section 57 of the Act.

26. It is a prerequisite that only a person aggrieved can invoke Section 47 and Section 57. In my view, the Petitioner cannot be regarded as a person aggrieved for the reasons set out above. Therefore, the reliance on ***Muhaidib***

*vs. Sachdeva*³ by Ms. Daniel to emphasise the implications of non-use is of no assistance.

No Passing Off Apprehension:

27. The Impugned Mark is a stylised device mark with a distinctive manner and style of how “DIVYAM”, the dominant feature of the device mark is written, and that too with the footnote “*Your Complete Divinity Store*” as an integral matter forming part of the device. “DIVYAM” is a variant of “DIVYA”. The word “DIVYAM”, in itself appears to be a generic word and is Sanskrit for the word “divine” and is directly linked to the goods described in its registration, which are essentially various materials used in the course of worship and rituals. However, what is registered is a very specific stylised device using the word “DIVYAM” in a dominant manner, with the letter “I” depicted like a flame, along with the footnote.

28. The Impugned Mark would not give even Respondent No. 1 any special monopoly right over “DIVYAM” because the protection granted by the registration is only for the specific stylised device that comprises multiple elements with the word “DIVYAM” only being the dominant feature. In any view of the matter, as a matter of law, the Respondent No. 1 too would not

³ *A.K. AL Muhaidib and Sons Vs. Chaman Lal Sachdeva and Ors.* – **MANU/DE/1109/2024**

enjoy any monopoly over the word “DIVYAM” or “DIVYA” with its protection being clearly for the specifically stylised device.

29. The question to ask is whether the Impugned Mark would cause confusion in the mind of a person of average intelligence with imperfect recollection. To my mind, this does not appear to be the case. The Petitioner is entirely in the cosmetics industry. Indeed, its Kumkum may be used in devotional applications. However, while the Respondent No. 1 purports to intend being in the space of materials used in pooja and ritual offerings, the Impugned Mark does not come close in any manner to the Petitioner’s “Divya Kumkum” in a manner that warrants cancellation. There is nothing structurally, phonetically or visually similar between the Petitioner’s marks and the Impugned Mark.

30. In my view, a lay person with average intelligence would not associate the Respondent No. 1’s products as having been a brand extension of the Petitioner which has used “EYETEX” in each and every mark deployed in its business. Any and every use of the word “DIVYA” or a variant such as “DIVYAM” by anyone in relation to any product in the market would never reasonably make any person of average intelligence with imperfect recollection, think that it is a product of the Petitioner. In my view, it is far-fetched to contend that for no reason other than the word “DIVYAM” being a

derivative of a part of “EYETEX DIVYA” and being the dominant element in the Impugned Mark, the products of Respondent No. 1, using the Impugned Mark would confuse the market about the Impugned Mark being a mark for promoting products of the Petitioner.

31. Dealing with a somewhat similar situation of a device mark having its own distinctive elements, in *Nandhini Deluxe*⁴, the Supreme Court set aside two concurrent findings of deceptive similarity, and the same is appropriate to cite in the facts of this case. The following extracts are noteworthy:

26.5. NANDINI/NANDHINI is a generic term, it represents the name of goddess and a cow in Hindu mythology. It is not an invented or coined word of the respondent.

26.7. Though there is a phonetic similarity insofar as the words NANDHINI/NANDINI are concerned, the trade mark with logo adopted by the two parties are altogether different. The manner in which the appellant has written NANDHINI as its mark is totally different from the style adopted by the respondent for its mark “NANDINI”. Further, the appellant has used and added the word “Deluxe” and, thus, its mark is “NANDHINI DELUXE”. It is followed by the words “the real spice of life”. There is device of lamp with the word “NANDHINI”. In contrast, the respondent has used only one word, namely, NANDINI which is not prefixed or suffixed by any word. In its mark “cow” as a logo is used beneath which the word NANDINI is written, it is encircled by egg shape circle. A bare perusal of the two marks would show that there is hardly any similarity of the appellant's mark with that of the respondent when these marks are seen in totality.

⁴ *Nandhini Deluxe v. Karnataka Coop. Milk Producers Federation Ltd.* – (2018) 9 SCC 183

27. When we examine the matter keeping in mind the aforesaid salient features, it is difficult to sustain the conclusion of IPAB in its order dated 4-10-2011 [Karnataka Coop. Milk Producers Federation Ltd. v. N. Anand & A. Narsimha Rupesh Anand, 2011 SCC OnLine IPAB 73] as well as in the impugned order of the High Court that the mark adopted by the appellant will cause any confusion in the mind of consumers, what to talk of deception. We do not find that the two marks are deceptively similar.

[Emphasis Supplied]

Similar Past Attempt:

32. Before parting with the matter, I must mention that it is a matter of public record that the Petitioner had, in fact, made a similar attempt in the past in reliance upon its registered trade mark “EYETEX DAZZLER” before the Madras High Court in the form of an infringement suit against a mark “DAILY DAZZLER”, which was repelled by a detailed judgement. In **Aravind v. Modicare⁵**, a Learned Single Judge (V. Ramasubramanian J, as he then was) ruled thus:

20. Therefore, it is clear that the registration of the trade mark in favour of the plaintiff was granted as a whole (i.e., as EYETEX DAZLLER) and that one of the constituent parts of the registered mark viz., the word “DAZLLER” is not registered separately. Even the attempt made by others to get the word “DAZZLE” registered, met with stiff resistance from the Registry on the ground that the word was descriptive. Therefore, it is anybody's guess today as to whether the plaintiff could have obtained registration for the word “DAZLLER” separately, in terms of Section 15(1).

⁵ M/s Aravind Laboratories vs. Modicare – **2011 SCC OnLine Mad 847**

21. Once it is seen that the word “DAZLLER” is not separately registered in favour of the plaintiff and that even the attempt made by others to appropriate the word “dazzle” failed, then the prescription in Rule 17(2)(a)(ii) would come into operation. Consequently, the defendant's use of the word “DAZLLER”, as part of the mark “Daily Dazzler” cannot be held to be an act of infringement.

[Emphasis Supplied]

33. This is the very reason for which I have stated above that the captioned rectification application does not lend itself to being allowed. As stated in the aforesaid judgement by the Madras High Court, it is anybody's guess if the Petitioner would have been granted a registration of the word “DIVYA”, which is part of “EYETEX DIVYA”.

34. In the result, in my opinion, the captioned Petition does not lend itself to being allowed, and is hereby ***dismissed***.

35. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]