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5IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.08.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)CMA(TM)/63/2023
(OA/3/2017/TM/CHN)

Filatex-VCT Pvt Ltd
Kochuveli Industrial Area,
Titanium P.O.,
Trivandrum, Kerala - 695021
(earlier known as Chacko Varghese V.C. Varghese,
Trading as Filatex, P.B. No. 6,
Titanium P.O., Industrial Area,
Trivandrum – 695021. ... Appellant

-vs-

1.The Registrar of Trademarks
Trade Marks Registry
Chennai

2.Filatex India Limited
42, Community Centre,
New Friends Colony,
New Delhi - 110 065 ... Respondents

PRAYER: Transfer Civil Miscellaneous Appeal (Trademarks) filed under Section 91 of the Trademarks Act, 1999, prays (i) to set aside the impugned order dated 28th November 2016 passed by the Respondent No.1 and to allow the interlocutory petition dated 30th April 2013 and to allow the two TM-16's, both dated 5th February

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2009 filed by Appellant in Application No.721175 in Class 17 to amend the name and address of the Appellant as Filatex -VCT Private Limited and to amend in the counter statement the trading style of the Appellant as Filatex – VCT Private Limited to allow the evidence in support of application filed by the Applicant; (ii) stay the operation and effect of the impugned order dated 28th November 2016 pending final disposal of this appeal; and (iii) stay all further proceedings before the Respondent No.1 in the matter of Application No.721175 and the in the matter of Opposition No. MAS-730498 pending final disposal of this appeal .

For Appellant : Mr.K.Premchandar for
for M/s.Anand and Anand

For Respondents : Mr.R.Subramanian, CGSC, for R1
Mr.Arun C. Mohan for R2

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JUDGMENT

The appellant challenges an order dated 28.11.2016 by which the request to amend the name of the applicant in opposition proceedings was rejected.

2. Application No.721175 was filed by the partnership firm, which was trading as M/s.Filatex, for registration of the mark 'FILATEX' in relation to rubber thread. The second respondent herein opposed such registration by filing notice of opposition MAS - 730498.

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After filing the counter statement in response thereto, on 11.11.2008, the appellant filed Form TM-16 for amendment. This application was rejected by the impugned order.

3. Learned counsel for the appellant has placed before me the Memorandum of Association of "FILATEX – VCT Private Limited, which provides that the company was incorporated *inter alia* to take over the assets and liabilities of the partnership firm, M/s.Filatex. The appellant asserts that the private limited company uses the mark 'FILATEX' after its incorporation and not the partnership firm.

4. On examining the impugned order, it is evident that the Assistant Registrar of Trademarks recognized that Form TM-16 was filed with supporting documents. In spite of noticing the same, the application was rejected solely on the ground that it was made belatedly about five years after the private limited company was formed.

5. Learned counsel for the second respondent opposes the appeal by pointing out that the appellant has not taken any steps to amend the name of the applicant in Application No.721175.

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6. The application filed by the appellant in Form TM-16 is largely consequential to the transfer of assets (including the mark) and liabilities of the partnership firm to the private limited company. Therefore, such application should not have been rejected solely on the ground of delay. Consequently, the impugned order is set aside.

7. As a corollary, the appellant is permitted to carry out the amendment in the opposition proceedings. It is also open to the appellant to file an appropriate application to amend the name of the applicant in Application No.721175 and such application may be dealt with in the manner known to law.

8. In the result, (T)CMA(TM) No.63 of 2023 is allowed on the terms indicated above without any order as to costs.

30.08.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

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