2023:MHC:3878

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.0**8.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)CMA(TM)/145/2023
(OA/22/2019/TM/CHN)

Vashkleen Laundry Services Pvt. Ltd.
#20, Bangalore Cooperative Industrial Estate,
Old Madras Road, K.R.Puram,
Bangalore-560 016. ... Appellant

-vs-

The Registrar of Trademarks,
The Trademarks Registry,
IP Building, GST Road,
Guindy, Chennai 600 032. ... Respondent

PRAYER: Transfer Civil Miscellaneous Appeal (Trademarks) filed under Section 117 A of the Trademarks Act, 1999, to aside the order of refusal dated 06/08/2018 issued by the respondent in application No.2118991 in classes 37 and 44 and consequently proceed with the application in the manner known to law.

For Appellant : Mr.S.Diwakar
for M/s.Factum Law

For Respondent : Mr.S.Diwakar, SPC

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JUDGMENT

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The appellant assails an order dated 06.08.2018 by which the application for registration of the device mark



in Class 37 (in respect of laundry services) and Class 44 (in respect of medicinal and hygiene services) was rejected. The impugned order records that none appeared for the appellant and that there was no request for adjournment. The present appeal is filed in the said facts and circumstances.

2. Learned counsel for the appellant submits that he appeared at the hearing on 22.05.2017 and also placed evidence of use of the device mark from 30.08.2010. Therefore, he submits that the impugned order is unsustainable and is liable to be set aside. He also points out that the impugned order was issued after the lapse of about 1 ½ months from the hearing date. Such order was issued by Ms.Rema Srinivasan Iyengar, Assistant Registrar of Trade Marks,

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whereas the grounds of decision were communicated on 06.08.2018 by Mr.M.Habibulla, Assistant Registrar. Hence, he submits that there was complete non-application of mind and non-consideration of the contentions of the appellant and the evidence relied upon by the appellant.

3. Without making any concession with regard to the merits of the application, Mr.S.Diwakar, learned SPC, submits that the matter may be remanded for re-consideration in view of the assertion by learned counsel that he appeared at the hearing on 22.05.2017.

4. In paragraph 2 of the impugned order, it is recorded as under:

> *"2. None appeared. There is no request for adjournment. Objections under Section 9 and / or 11 cannot be waived. Application is accordingly refused under Section 18(4) of the Act."*

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4. The said order was issued on 06.07.2017 in respect of the hearing on 22.05.2017. The order was issued by Ms.Rema Srinivsan Iyengar, Assistant Registrar of Trade Marks. The grounds of decision dated 06.08.2018 were communicated by a different officer, namely, Mr.M.Habibulla, Assistant Registrar. There is a clear disconnect between the original order and the grounds of decision inasmuch as the grounds of decision do not contain any indication that the appellant did not appear. While purporting to decide the matter on merits, the grounds of decision do not contain any reasons for disregarding the evidence placed on record by the appellant. Instead, it is stated that "the applicant mark is claimed to be used since 2010 however no single user document is produced to substantiate the user claimed due to which it cannot be said that the mark has acquired the distinctive character".

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5. For reasons set out above, the impugned order and the consequential grounds of decision cannot be sustained. They are hereby set aside. Since the contentions of learned counsel for the appellant were not considered in the impugned order, I do not propose to deal with the matter on merits. Instead, the matter is remanded for re-consideration from the arguments stage. By taking into account the fact that the relevant application was filed on 17.03.2011, it is directed that a reasoned decision be issued after providing a reasonable opportunity to the appellant within a maximum period of *three months* from the date of receipt of a copy of this order. There shall be no order as to costs.

22.08.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes/No
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