IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 13TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

R

WRIT PETITION NO. 77807 OF 2013 (GM-CPC)

BETWEEN:

1. M/S. SRI LAXMI BALAJI INDUSTRIES,
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS OFFICE AT SURVEY NO.440/A/5,
NAVALI ROAD, KARATAGI, KARNATAKA,
REPRESENTED HEREIN BY ONE OF ITS PARTNERS ,
SRI. N. GOPALAKRISHNA.

2. M/S. SRI LAXMI VINAYAKA,
RICE INDUSTRIES,
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS OFFICE AT SURVEY NO.440/A/5,
NAVALI ROAD, KARATAGI, KARNATAKA,
REPRESENTED HEREIN BY ONE OF ITS PARTNERS ,
SRI. N. GOPALAKRISHNA.

...PETITIONERS

(BY SRI. S.R. KAMALACHARAN, ADVOCATE)

AND:

SAROJA HANGARAKI
Location: HIGH COURT OF KARNATAKA DHARWAD BENCH

M/S. LAKSHMI VENKATESHWAR
RICE INDUSTRIES, A PARTNERSHIP FIRM HAVING
ITS OFFICE AT: SINDHANUR ROAD,
SIRUGUPPA, BELLARY DISTRICT,
REPRESENTED BY ITS PARTNER
SRI. S. DATTA SHABAREESH.

...RESPONDENT

(BY SMT. V. VIDYA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL THE RECORDS OF O.S.NO.3/2012 ON THE FILE OF THE PRINCIPAL DISTRICT JUDGE AT BELLARY; TO SET ASIDE THE ORDER DATED:30/03/2013 PASSED ON I.A.NO.7 IN O.S.NO.3/2012 BY THE PRINCIPAL DISTRICT JUDGE AT BELLARY (ANNEXURE-J) AND ALLOW I.A.NO.7 CONSEQUENTLY STAYING ALL FURTHER PROCEEDINGS IN O.S.NO.3/2012 PENDING DISPOSAL OF THE RECTIFICATION PROCEEDINGS BEFORE

REGISTRAR OF TRADEMARKS, CHENNAI; TO GRANT COSTS OF THE PROCEEDINGS AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.09.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

CAV ORDER

(PER: HON'BLE MR. JUSTICE H.P. SANDESH)

1. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

2. The present petition is filed invoking writ jurisdiction under Articles 226 and 227 of the Constitution of India praying this Court quash the order dated 30.03.2013 passed on I.A.No.VII in O.S.No.3/2012 by the Principal District Judge at Ballari vide Annexure-J and consequently allow the same and as a result further proceedings in O.S.No.3/2012 be stayed pending disposal of the rectification proceedings before Registrar of Trademarks, Chennai and grant such other reliefs as deemed fit in the circumstance of the case.

3. The petitioners while seeking a writ of certiorari contended that few partners of the petitioners began the

business of manufacturing and supplying rice produces in the year 1993 under the name and style of 'M/s. Sri Raghavendra Agro Agencies', under the brand name 'R Gold'. Thereafter, in the year 1998, 'M/s. Sri Raghavendra Agro Agencies', introduced a new product 'Sortex Silky Rice' under the brand name 'Swamy Ayyappa Gold'. Two different partnership firms were formed namely 'Sri Laxmi Balaji Industries' and 'Sri Laxmi Vinayaka Rice Industries' in the year 1998. Application was filed by the petitioner for registration of trademark 'Swamy Ayyappa Gold' and 'Image/Device of Lord Ayyappa' before the Registrar of Trademarks, Chennai in Application No.1973803 and No.1474317 in the year 2010.

4. It is contended that the respondent herein filed suit in O.S.No.3/2012 before Principal District Judge at Ballari seeking an order of permanent injunction restraining the petitioners herein from using the brand name 'Swamy Ayyappa Gold'. Respondent herein filed Application under Order XXXIX Rule 1 & 2 of the Code of

Civil Procedure (hereinafter referred to as 'CPC' for brevity) for an order of interim injunction restraining the petitioners herein from marketing its products under the name and style of 'Swamy Ayyappa Gold'" on 27.02.2012 and the application filed by the respondent herein for temporary injunction is allowed by Principal District Judge at Ballari on 01.03.2012. It is also the contention of the petitioners herein that they have filed written statement to the suit on 12.04.2012 after the disposal of the interim application filed under Order XXXIX Rule 1 and 2 of CPC. Petitioners herein filed objections to the application filed by the respondent herein under Order XXXIX Rule 1 & 2 of CPC on 12.04.2012 and interim order granted on 01.03.2012 was modified by the Principal District Judge Ballari on 19.04.2012.

5. It is also the contention of the petitioners that they have filed an application for rectification before the Trademarks Registrar, Chennai against the trademark of respondent herein on 24.07.2012 and notice was also

issued to the respondent herein by the Registrar of Trademarks, Chennai on 08.10.2012 and petitioners herein also filed an application in I.A.No.VII under Section 124 of the Trade Marks Act, 1999 (hereinafter referred as 'the Act' for brevity) seeking stay of further proceedings in O.S.No.3/2012 pending the rectification proceedings before the Trademarks Registrar, Chennai on 21.02.2013. Petitioners herein also filed memo with documents to show that proceedings before the Trademarks Registrar is pending for rectification of the trademark of the respondent on 21.02.2013 and also respondent herein filed objections to the application filed by the petitioner under Section 124 of the Trade Marks Act, 1999 on 28.02.2013 and the Trial Court having heard both the counsels, dismissed the application vide order dated 30.03.2013. Hence, the present petition is filed being aggrieved by the order of dismissal of I.A.No.VII.

6. Counsel for the petitioners relied upon document at Annexure-A which is the copy of amended

plaint and contends that the respondent has pleaded that the trademark 'Ayyappan' has been used since 1992 for a period of ten years and after the ten years also the same is extended. Counsel also relied on the interim application filed before the Trial Court and granting an order of injunction as Annexures-B and B1. It is also the contention of the petitioners' counsel that detail statement of objection was filed by the petitioners and objections of the respondents to the interlocutory application are produced as Annexures-C and D. He also contends that the Trial Court modified the interim order granted earlier and the copy of the same is also produced as Annexure-E. He also relied upon the copy of application and memo along with documents produced as Annexures-F and G. Counsel would also vehemently contend that when the application was filed under Section 124 of the Act, the respondent has also filed objections to the said application in terms of Annexure-H and the order passed by the Trial court is also produced as Annexure-J. He also relies upon several

documents which have been relied before the Trial Court as Annexures-K, L, M, N, P and Q.

7. It is the contention of the petitioners' counsel that without any other alternative remedy, the petitioners have filed this writ petition. Counsel in his argument vehemently contends that the impugned order is a not a speaking order and even the same has been passed without even the slightest reference to the oral submissions made by the petitioners as well as the documents on record and not considering the legal position thereon. The Principal District Judge, Ballari has also failed to appreciate the correct legal position and appreciate the law laid down by various High Courts and Hon'ble Apex Court. The Trial Court has misguided itself of the actual facts of the case in passing the impugned order. The Trial Court while deciding the application under Section 124 of the Act *inter alia* has to consider whether the applicant pleads that registration of the respondent's trademark is invalid and whether there is any proceedings

for rectification of the register in relation to the respondent's trademark are pending before the Registrar or the Appellate Board. Hence, the finding of the Trial Court that there is no claim for use of work 'Swamy Ayyappa Gold' on the rice bag of the petitioners is erroneous.

8. It is also contended that the Trial Court has misread and improperly interpreted the provisions of Section 124 of the Act by referring only to Sub-clause (b) (i) of Section 124. It is submitted that a provision in an enactment has to be read entirely and it has to be understood and constructed in a manner that it is intended for. It is also well settled in law that when an application is filed and the issue is with regard to the trademark dispute is pending, Section 124 of the Act ought to have been read in entirety and the same has to be interpreted ordinarily in plain language by keeping in mind the intention of the legislature. It is also the contention of the petitioners' counsel that the Trial Court has only taken Sub-clause (b)

of clause (1) of Section 124 in deciding the said application for stay, whereas the thrust of the petitioners' case is based on the provisions of Section 124(1)(a)(i). The provisions of Section 124(1)(b) do not apply to the facts of this case. The learned Trial Court by taking only Sub-clause (b) of Sub-section (1) of Section 124 into consideration, has failed to notice the fact that petitioner herein has pleaded in his written statement regarding the invalidity of the respondent's trademark. The Trial Court thereby has failed to notice that clause (a) of Sub-section 124 has been complied by the petitioners herein for the grant of the relief mentioned therein. The Trial Court further holds that the petitioners herein have not taken defence as contemplated under clause (e) of the Sub-section 2 of Section 30 of the Act. The Trial Court ought to have relied upon the said provision.

9. The petitioners herein have specifically pleaded questioning the validity of the trademark of the respondent in para Nos.20 and 21 of the written statement

amongst in other portions of the written statement. Hence, the order passed by the Trial Court is erroneous and hence it ought to have allowed the application, I.A.No.7 and instead of that the Trial Court has measurably observed and held that there is no mandate require for any Court to apply for leave of the Court to file an application for rectification.

10. Counsel for the petitioners in support of his argument, vehemently contends that the matter is pending before the Madras High Court and the application was filed long back on 24.07.2012 and Trial Court failed to take note of the very proviso of Section 124 in its entirety and the impugned order is not correct.

11. Counsel in support of his argument also, has relied upon the following judgments"

i. Whirpool Corporation vs. Registrar of Trade Marks Mumbai reported in ***AIR 1999 SC 22***

ii. ***M/s Elofix Industries (India) vs. M/s. Steel Bird Industries*** reported in ***AIR 1985 DELHI 258***

iii. ***B.Mohamed Yousuff vs. Prabha Singh Jaswant Singh and Others*** reported in ***2008 (38) PTC 576 (Mad)***

iv. ***Arun Colour Chem and Others vs. Mithumal Essence Mart and Another*** reported in ***167 (2010) DLT 285***

v. ***SIEL Edible Oil Limited, (SEOL) vs. Khemka Sales Private Limited*** reported in ***2010 (42) PTC 154 (Del)***

vi. ***Jeet Biri Manufacturing Company Private Limited vs. Pravin Kumar Singhal and the Registrar of Trademarks*** reported in ***2011 (47) PTC 231 (IPAB)***

vii. Patel Field Marshal Agencies and Another vs. P.M. Diesels Limited and Others reported in ***(2018) 2 SCC 112***

12. Counsel for the petitioners referring to the judgment in the case of ***Whirpool Corporation***, supra contends that in para No.61 of the said judgment it is discussed invoking Section 114 of the Act which is para materia to Section 124 of the Act. By referring to the judgments of different High Courts, he contends that in all the judgments, Section 124 of the Act has been discussed and considering the same, stayed the proceedings which is pending before the Civil Court in coming to the conclusion that the dispute with regard to the validity of the trademark has to be decided before the competent forum.

13. Counsel by relying on the judgment in the case of ***Patel Field Marshal Agencies***, supra brought to notice of this Court para Nos.26 and 34, wherein also it has been discussed the earlier view in ***AstraZeneca UK***

Limited vs. Orchid Chemicals and Pharmaceuticals Limited reported in ***2006 SCC Online Del 1668*** and also taken note of the fact that intention of the legislature is clear and once an issue to the said effect is framed, the matter will have to go to the Tribunal and the decision of the Tribunal will thereafter bind the Civil Court and when the matter is pending before the High Court with regard to rectification of trademark application, the Trial Court ought to have exercised its discretion in entertaining the application filed under Section 124 of the Act.

14. Per contra, counsel for the respondent would vehemently contend that the suit was filed for the relief of permanent injunction and in the written statement it is not stated specifically with regard to trademark dispute is concerned. He also contends that the application for rectification must be pending as on the date of the filing of the suit. He contends that the registration of the trademark of the plaintiff/respondent is in 2010 itself and the respondent herein is using the same from 1992. It is

contended that as on the date of filing of the suit, no such application was pending and only after commencement of trial, they have filed an application and hence the Trial Court has rightly dismissed the application.

15. The judgments relied upon by the petitioners are not applicable to the case on hand. The counsel also relied upon the judgment of this Court in *W.P.No.24093/2012* decided on 17.07.2012 and brought to notice of this Court the discussion made in para Nos.15, 16, 17, wherein an observation is made that, in other words, satisfaction of the Trial Court is a condition precedent for proceeding further to allow the parties to apply to the Trial Court. He also contends that the judgment of the Hon'ble Apex Court in the case of ***Ramdev Food Products vs. Arvindbhai Rambhai Patel and Others*** reported in ***(2006) 8 SCC 726*** was also considered by this Court, wherein the Apex Court has disapproved staying of proceedings at a belated stage. In the case on hand also, the application is filed at a belated

stage and hence the Trial Court has not committed any error in rejecting the application and hence the judgment of this Court referred supra is aptly applicable to the case on hand.

16. In reply to the arguments of the learned counsel for the respondent, counsel for the petitioners would contend that Section 124 does not say that as on the date of filing of the suit, application must be pending and also contends that the Hon'ble Apex Court in the judgment referred supra has taken note of Section 124(1)(a)(i) and held that the Court can exercise powers. Counsel also contends that the correctness of the order of the Trial Court is challenged and also the rectification application is also filed before the appropriate forum and there was no need to frame an issue and subsequent judgment in the case of ***Patel Field Marshal Agencies,*** supra is aptly applicable to the case on hand.

17. Having heard the learned counsel for the petitioners and the learned counsel for the respondent and

also considering the principles laid down in the judgments referred by the respective counsels, the following point would arise for consideration of this Court:

i. *Whether the Trial Court has committed an error in dismissing the application filed under Section 124 of the Act filed praying stay of further proceedings in the suit?*

18. Having considered the material on record particularly the pleadings of plaintiff as well as defendants and so also the grounds which have been urged in the application and statement of objections, it is opt for this Court to extract Section 124 of the Act, which reads as follows:

> ***"124. Stay of proceedings where the validity of registration of the trade mark is questioned, etc.-*** *(1) Where in any suit for infringement of a trade mark-*
>
> *(a) the defendant pleads that registration of the plaintiff's trade mark is invalid; or*

(b) the defendant raises a defence under clause (e) of sub-section (2) of section 30 and the plaintiff pleads the invalidity of registration of the defendant's trade mark,

the court trying the suit (hereinafter referred to as the court), shall,-

(i) if any proceedings for rectification of the register in relation to the plaintiff's or defendant's trade mark are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the plaintiff's or defendant's trade mark is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) (ii) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of

the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit."

19. Having read the above said proviso, it deals with stay of proceedings where the validity of registration of the trademark is questioned. The aforesaid provision

specifically provides that if a proceeding for rectification of the register in relation to the trademark of either the plaintiff or defendant is pending before Registrar or the High Court, as the case may be, and a suit for infringement, is filed wherein the aforesaid plea is raised either by the defendant or by the plaintiff, the suit shall remain stayed.

20. Section 124 of the Act further provides that if no proceedings for rectification are pending on the date of filing of the suit and the issue of validity of registration of the plaintiff's or the defendant's trademark is raised/arises subsequently and the same is prima facie found to be tenable, an issue to the aforesaid effect shall be framed by the Civil Court and the suit will remain stayed for a period of three months from the date of framing of the issue so as to enable the party concerned to apply to the High Court for rectification of the Register. Section 124(2) of the Act provides that in case an application for rectification

is filed within the time allowed, the trial of the suit shall remain stayed.

21. Section 124(3) of the Act provides that in the event no such application for rectification is filed despite the order passed by the Civil Court, the plea with regard to validity of the registration of the trademark in question shall be deemed to have been abandoned and the suit shall proceed in respect of any other issue that may have been raised therein.

22. Section 124(4) of the Act provides that the final order as may be passed in the rectification proceeding shall bind the parties and the Civil Court will dispose of the suit in conformity with such order insofar as the issue with regard to validity of the registration of the trademark is concerned. The Court has to see the true purport, intent and effect of the provisions contained therein so as to understand the said Section to be contemplating only stay of proceedings of the suit where validity of the registration of the trademark is questioned. Naturally, the whole of the

provisions of the Section will have to be read and so read the same would clearly show lack of any legislative intent to limit/confine the operation of the section to what its title may convey. The intention of the legislature is clear that all issues relating to and connected with the validity of registration has to be dealt with by the Tribunal and not by the Civil Court. However, in the event the Civil Court is approached, inter alia, raising the issue of invalidity of the trademark, such plea will be decided not by the Civil Court but by the Tribunal under the 1958 Act. The Tribunal will however come into seisin of the matter only if the Civil Court is satisfied that an issue with regard to invalidity ought to be framed in the suit. Once an issue to the said effect is framed, the matter will have to go to the Tribunal and the decision of the Tribunal will thereafter bind the Civil Court. If despite the order of the Civil Court the parties do not approach the Tribunal for rectification, the plea with regard to rectification will no longer survive.

23. In this judgment, the Hon'ble Apex Court in detail discussed with regard to scope and ambit of Section 124 of the Act. This Court also would like to refer para Nos.26 and 34 of the judgment in the case of ***Patel Field Marshal Agencies***, supra which read as follows:

> *"26. Insofar as its earlier view in AstraZeneca UK Ltd. (supra) is concerned, the Full Bench was of the opinion that the appellate jurisdiction of the High Court would only be confined to a consideration of the question of the prima facie assessment of tenability which would not touch upon the question of invalidity of the trade mark on merits. The view expressed in AstraZeneca UK Ltd. (supra) was held to be unacceptable on that basis. Insofar as the abandonment of the plea of invalidity is concerned, the Full Bench was of the opinion that Section 124(3) merely contemplates abandonment of the plea/defence of invalidity in the suit and not an abandonment to claim rectification under Sections 47/57 of the 1999 Act.*
>
> *34. The intention of the legislature is clear. All issues relating to and connected with the validity of registration has to be dealt with by the Tribunal and not by the civil court. In cases where the parties have not approached the civil court, Sections*

46 and 56 provide an independent statutory right to an aggrieved party to seek rectification of a trade mark. However, in the event the Civil Court is approached, inter alia, raising the issue of invalidity of the trade mark such plea will be decided not by the civil court but by the Tribunal under the 1958 Act. The Tribunal will however come into seisin of the matter only if the Civil Court is satisfied that an issue with regard to invalidity ought to be framed in the suit. Once an issue to the said effect is framed, the matter will have to go to the Tribunal and the decision of the Tribunal will thereafter bind the Civil Court. If despite the order of the civil court the parties do not approach the Tribunal for rectification, the plea with regard to rectification will no longer survive."

24. Having considered the principles laid down in the aforesaid judgment, it is clear that Section 124 of the Act nowhere contemplates any grant of permission by the Civil Court to move to the High Court or IPAB, as may be, for rectification. The true purport and effect of Sections 111/124 (of the old and new Act) has been dealt with in detail and would not require any further discussion or enumeration. The requirement of satisfaction of the Civil

Court regarding the existence of a prima facie case of invalidity and the framing of an issue to that effect before the law operates to vest jurisdiction in the statutory authority to deal with the issue of invalidity by no means, tantamount to permission or leave of the civil court, as has been contended. It is a basic requirement to further the cause of justice by elimination of false, frivolous and untenable claims of invalidity that may be raised in the suit.

25. The principles laid down in the case of ***Patel Field Marshal Agencies***, supra are aptly applicable to the facts of the case on hand since though an application is filed subsequent to filing of the suit by the respondent herein but the same is pending for adjudication and since in case where an issue of invalidity is raised or arises, independent of a suit, the prescribed statutory authority will be the sole authority to deal with the matter and hence in a suit where inter alia, raising the issue of invalidity of the trademark is pending and also when the

suit is filed for the relief of permanent injunction, the same should be stayed.

26. In the case on hand, exercising of jurisdiction by the prescribed statutory authority is contingent on a finding of the Civil Court as regards the prima facie tenability of the plea of invalidity is questioned by the petitioner herein and the finding of the Tribunal/High Court is binding on the Trial Court in considering the same.

27. No doubt, learned counsel for the respondent relied upon the judgment of this Court passed in W.P.No.24093/2012 and brought to notice of this Court the discussion made by this Court in para Nos.15, 16 and 17, wherein it is held that as on the date of filing of the suit, application must be pending and the same is not within the parameters of Section 124 and also Section 124 clearly says that if any such application is pending and even if such application is not pending, even the Court can raise the issue and give time of three months and even if no such application is filed within the given time, then the

Court can proceed and hence this judgment will not come to the aid of the counsel for the respondent.

28. The Apex Court also in the judgment in the case of ***Whirpool Corporation***, supra discussed in para No.61 with regard to old provisions of Section 111, which reads as follows:

> *"61. Similarly, under Section 111 of the Act, in a pending suit relating to infringement of a Trade Mark, if it is brought to the notice of the Court that any rectification proceedings relating to plaintiff's or defendant's trade Mark are pending either before the Registrar or the High Court, the proceedings in the suit shall be stayed pending final decision of the High Court or the Registrar. Even if such proceedings are not pending either before the Registrar or the High Court, the trial court, if prima facie satisfied that the plea regarding invalidity of plaintiff's or defendant's Trade Mark is tenable, may frame an issue and adjourn the case for three months to enable the party concerned to apply to the High Court for rectification of the Register. If within three months, the party concerned does not approach the High Court, the plea regarding invalidity of Trade Mark would be treated as*

abandoned but if such an application has been given hearing, the suit would be stayed awaiting final decision of the High Court. The finding of the High Court would bind the parties and the issue relating to the invalidity of Trade Mark would be decided in terms of those findings."

(emphasis supplied)

29. Having read the aforesaid, the Apex Court categorically held that in a pending suit relating to infringement of a trademark, if it is brought to the notice of the Court that any rectification proceedings relating to plaintiff's or defendant's trademark are pending either before the Registrar or the High Court, the proceedings in the suit shall be stayed pending final decision of the High Court or the Registrar. Even if such proceedings are not pending either before the Registrar or the High Court, the Trial Court, if prima facie satisfied that the plea regarding invalidity of plaintiff's or defendant's trademark is tenable, may frame an issue and adjourn the case for three months to enable the party concerned to apply to the High Court for rectification of the Register.

30. Having read the principles laid down in the judgment of the Apex Court and no doubt other judgments of different High Courts relied on by the petitioners' counsel also taken note of Section 124 of the Act. Hence, it is clear that even if no such application is pending on the date of filing of the suit also, Section 124 provides an opportunity to make an application and hence the contention of the respondent's counsel cannot be accepted.

31. Having perused the material on record and also though it is contended by the respondent's counsel that the issue is not raised by the petitioners herein in the written statement having read the written statement entirely at Annexure-C and counsel also brought to notice of this Court para No.11 as to no such stand was taken, but on reading of para No.20 of the written statement, it is categorically stated that the plaintiff claims ownership of a label mark which is apparently registered with disclaimer on the exclusive use of the device of 'Lord Ayyappa' and

on all descriptive matter appearing on the label. The application filed by the plaintiff for trademark registration claims period of use from 14th Jan 1999, which is subsequent to the defendant's usage. The plaintiff claims user from 1992 in the suit without producing a single document on his behalf to establish such usage from 1992.

32. Having taken note of the specific defence that trademark journal publication itself reflects the date of user claim as 13.07.1992, the basis of such entry would be either typographical error due to the voluminous nature of trademark journal publication or based on the document produced by the plaintiff to establish the user from 1992 in the registry. However, no such document is filed in the present suit to claim usage from 1992, as such it is to be presumed that the usage claimed by the plaintiff is totally false and baseless and the defendant reserves its liberty to challenge the registration granted in favour of the plaintiff

in separate rectification proceedings before Intellectual Property Appellate Board (IPAB).

33. The specific stand is also taken in the written statement, particularly in para No.20, the very contention of the respondent's counsel that validity has not been disputed in the written statement cannot be accepted. Having considered the material on record and the pleadings of the plaintiff as well as the defendants and also taking note of the very validity of the registration certificate is disputed by the petitioners herein in para No.20 of the written statement, the very contention of the respondent that the same plea has not been raised is also cannot be accepted.

34. Apart from that, having considered and discussed the material available on record, particularly Section 124 in toto, the very Act is very clear that if any application for rectification is pending and the same has to be adjudicated and till then the matter has to be stayed. Hence, the Trial Court has committed an error in

considering the very proviso under Section 124(1)(a) and as contended by the petitioners' counsel it ought to have considered Section 124(1)(b) and misdirected itself and passed the impugned order. Hence, it requires interference of this Court. Hence, I answer the above point framed for consideration in 'Affirmative'.

35. In view of the above discussion, I pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The order dated 30.03.2013 passed on I.A.No.VII in O.S.No.3/2012 by the Principal District Judge at Ballari vide Annexure-J is hereby quashed.

(iii) Consequently, the application filed under Section 124 of the Trade Marks Act, 1999 by the petitioners is allowed and further proceedings of the Trial Court in O.S.No.3/2012 are stayed,

pending disposal of the Rectification Application which is pending before the High Court of Madras.

(iv) The petitioners are also directed to expedite the application for rectification which is pending for consideration since suit is pending from 2012 which is more than a decade old.

Sd/-
(H.P. SANDESH)
JUDGE

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CT-MCK
List No.: 1 Sl No.: 92