2023:MHC:4030

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T) CMA (TM) No.137 of 2023
[(OA)/13/2019/TM/CH]

Infinitheism Spiritual Foundation Pvt Ltd.,
(Registered under the Indian Companies Act, 1956)
Rep. By its General Manager, Mr.N.Sivasankaran,
No.3, 3rd Cross Street, R.A.Puram, Chennai – 28,
Tamil Nadu, India .. Appellant

vs

1.The Registrar of Trade Marks,
The Trade Marks Registry,
IP Office Building, GST Road,
Guindy, Chennai – 32.

2.The Assistant Registrar of Trade Marks,
The Trade Marks Registry,
IP Office Building, GST Road,
Guindy, Chennai – 32. .. Respondents

Transfer Civil Miscellaneous Appeal (Patents) filed under Section 91 of the Trade Marks Act, 1999 to set aside the impugned order of the respondent passed for the mark 'MOST AND MORE' in Trademark application No.2290671 in Class 16 in Order No.TLA/58/06/08/2018 dated 06.08.2018.

For Appellant : Mr.R.Sathish Kumar
for M/s.Altacit Global

For Respondent : Mr.S.Diwakar
SPC

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JUDGMENT

The appellant assails an order by which Application No.2290671 for the registration of the mark 'MOST AND MORE' was refused. On 27.02.2012, the appellant applied for registration of the mark set out above in Class 16 in relation to publications, magazines and the like. In the application, the date of use of the mark was specified as 11.11.2011. In support of such use, the appellant placed on record online publications and printed publications containing the said mark or wherein the said mark was advertised, and copies of invoices issued by the appellant in relation to the sale of books containing the said mark.

2. By examination report dated 24.01.2013, objections were raised both under Section 9 and Section 11 of the Trade Marks Act, 1999 (the Trade Marks Act). The objection under Section 9 was raised on the ground that the mark is not distinctive and the objection under Section 11 was made by citing other similar marks. The appellant responded to the examination report on 25.11.2013. As regards the objection under Section 9, the appellant asserted that the mark 'MOST AND MORE' is an arbitrary, fanciful, invented and distinct mark. As regards the cited marks, the appellant stated

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that the cited marks are distinguishable if the comparison is made between the whole of the cited mark and the whole of the appellant's mark. Eventually, the order of refusal was issued on 18.07.2017 and the grounds of decision were provided on 06.08.2018. The present appeal is filed in the said facts and circumstances.

3. Learned counsel for the appellant invited my attention to the application, the examination report, the reply thereto and the grounds of decision. His first contention was that the conclusion in the grounds of decision that the appellant's mark was applied on a 'proposed to be used' basis is contrary to the evidence on record. In this regard, he pointed out that the application mentions use from 11.11.2011, which pre-dates the date of application. He also pointed out the evidence of use, which was placed on record.

4. His next contention was that the mark cannot be construed as either generic or descriptive of the goods / services in relation to which the mark is applied. As regards the marks cited in the examination report, he pointed out that at least three of the marks are label marks and that none of the cited marks contain the words 'MOST AND MORE'. He further submitted that the appellant's

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application could not have been rejected on absolute grounds after registering the marks cited in the examination report.

5. In response to these contentions, Mr.S.Diwakar, learned SPC, submits that the words 'MOST and MORE' are words found in the English dictionary. Therefore, the said words are not distinctive. He further submitted that the order of refusal is justified in view of the existence of multiple marks, which are deceptively similar to the appellant's mark.

6. The operative portion of the grounds of decision is as follows:-

> *"The Mark is highly descriptive and it has direct reference to the goods applied and the cited marks are deceptively similar to the applicant mark and the said cited marks are much prior than the applicant mark and the applicant mark is claimed to be used as proposed to be used due to which it cannot be said that the mark has acquired the required distinctive character.*
>
> *In view of the above the application is refused under Section 9 & 11 of the Trade Mark Act."*

7. As contended by the learned counsel for the appellant, the conclusion that the appellant's mark was applied for on a 'proposed to be used' basis is contrary to the documents on record. The appellant stated in the application dated 27.02.2012 that the

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mark was used from 11.11.2011 and evidence of use of the mark was produced before the Registrar of Trade Marks. A conclusion that the mark is generic or descriptive cannot be drawn without reference to the goods or services in relation to which the mark is applied. The mark 'MOST AND MORE', when applied to publications, magazines and the like, is clearly neither generic nor descriptive. Hence, the objection under Section 9 is overruled. As regards the objection under Section 11, it is clear on examining the cited marks that the said marks contain either the word 'MOST' or the word 'MORE', but not both words. The settled legal position is that the comparison should be made between the marks as a whole and not by dissecting the same. Therefore, the impugned order is unsustainable and is, hereby, set aside.

8. In view of the conclusion that the objection under Section 9 is untenable and by taking into account the nature of the cited marks, the appellant's application is directed to proceed to advertisement albeit subject to the limitation that the appellant shall not claim exclusive right to use the words 'MOST' or 'MORE', when used separately. It is also made clear that this order will not be binding on opponents, if any.

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9. The appeal stands disposed of without any order as to costs.

04.09.2023

Index:Yes
Neutral Citation:Yes
ssm

To

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