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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HON'BLE MR. **JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)CMA(TM). 162 of 2023
(OA/36/2020/TM/CHN)

Mr. Jagarlamudi Durga Prasad
Flat No. 108, Laasya Block,
Poojitha Estate, Model Colony,
Erragadda, Hyderabad-500 038,
Telangana, India. ... Appellant

Vs.

The Registrar of Trademark,
Trademark Registry,
Intellectual property Building,
GST road, Chennai ... Respondent

PRAYER : This Civil Miscellaneous Appeal filed under Section 91 of the Trademark Act, 1999, prays to set aside the refusal order dated 10.07.2019 passed by the learned Registrar of Trademarks in respect of the Show Cause Hearing conducted on 19.02.2019 refusing the registration of the Appellant's Trade Mark GRAMA BAZAAR as per Application No. 3589530 under class 35 and allow the Application No.3589530 for the registration of the Trade Mark GRAMA BAZAAR under Class 35.

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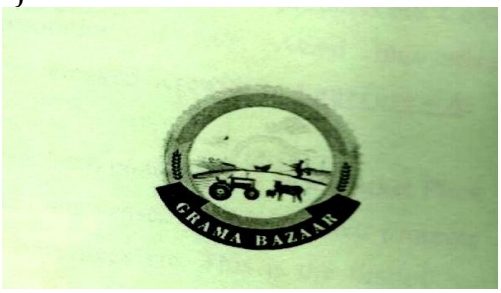
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For Appellant : Ms.Arthi Fernandes

For Respondent : Mr.J.Madanagopal Rao

JUDGMENT

The appellant assails an order dated 10.07.2019 by which Application No.3589530 in class 35 for registration of the following device mark was rejected:



2. The applicant is a division of a registered partnership firm, represented by its partner Mr.Jagarlamudi Durga Prasad. The application was submitted on 11.07.2017 by claiming user from 29.03.2017. In the examination report dated 18.08.2017, the Registrar of Trade Marks raised objections under Section 11(1) of the Trade Marks Act, 1999 (the Trade Marks Act), by citing two marks in classes 30 and 31. In response thereto, the appellant stated that his mark is a composite mark and when viewed as a

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whole, it is a distinctive. As regards the cited marks, the appellant stated that the cited marks were filed in classes 30 and 31, whereas the appellant's mark was filed in class 35. After a hearing on 19.02.2019, by order dated 10.07.2019, Application No.3589530 was rejected by citing both absolute and relative grounds. The grounds of decision, which were provided on 14.08.2019, also drew reference to Sections 9 and 11. The present appeal is filed in these facts and circumstances.

3. After inviting my attention to the device mark for which the application was submitted, learned counsel pointed out that the marks cited in the examination report were word marks that were registered in classes 30 and 31, which pertain to goods. By contrast, learned counsel contended that the appellant functions as a market place for farmers and artisans to market their products. Consequently, she contended that the allegedly conflicting marks are in relation to goods and that the same cannot be construed as similar to the services provided by the appellant. Learned counsel also contended that the mark is a device mark

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which contains pictures of a tractor, a cow, a farmer and that the words 'GRAMA BAZAAR' are written beneath the device containing the above. By relying upon the judgment of the Delhi High Court in *Navaid Khan v. Registrar of Trade Marks Office, 2023 SCC Online Del 3273,* she contends that such device mark would not fall within the scope of Section 9(1) of the Trade Marks Act. Learned counsel also contended that no objection was raised under Section 9(1) in the examination report and that such objection was raised for the first time in the impugned order.

4. In response, Mr.J.Madanagopal Rao, learned SPC, invited my attention to the impugned order and pointed out that the application was rejected on account of the existence of conflicting marks on the register. With reference to the cited mark 'GRAMA BAZAAR', learned counsel submitted that the said mark is clearly deceptively similar to the the appellant's mark. Since such mark was registered prior to the appellant's application and stands renewed up to 2026, he contended that the impugned order does not call for interference.

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5. The appellant's mark is evidently a device mark. As contended by learned counsel for the appellant, the said mark consists of more than one component or element. The mark consists of a circular device and the circular device, in turn, contains a tractor, a cow, a farmer, etc. The words 'GRAMA BAZAAR' are set out beneath such circular device. The mark is applied in relation to a market place.

6. On examining the impugned order, it is clear that both Sections 9 and 11 are referred to therein and that this is in contrast with the examination report which only contains a reference to Section 11. The impugned order calls for interference on the above ground. Even otherwise, by taking into account the fact that the application is in respect of a device mark in relation to services, as opposed to the cited marks, the application is liable to be accepted for advertisement.

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7. For reasons set out above, the impugned order dated 10.07.2019 is set aside and the respondent is directed to accept the application for advertisement. This will be subject to the incorporation of the limitation that the appellant shall not claim exclusive use of the words 'GRAMA' or 'BAZAAR', whether used separately or together. This order will also not be binding on opponents, if any. There shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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