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In the High Court of Judicature at Madras

Reserved on	Delivered on:
08.1.2026	**19.1.2026**

Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

(T)CMA(TM).No.112 of 2023

M/s. Karnataka Cooperative
Milk Producers Federation Limited,
KMF Complex, Hosur Road,
Bangalore-560029 ...Appellant

Vs

1.Vinod Kanji Shah & Nitin
Kanji Shah, Trading as
Shalimar Agarbatti Company,
Shalimar House, P.B.No.2114,
32 & 33, 3rd Cross,
Srirampuram, Bangalore-560021.

2.The Deputy Registrar of Trade Marks
Office of the Trade Marks Registry
I.P.Building, GST Road, Guindy,
Chennai-600032.

...Respondents

APPEAL under Section 91 of the Trade Marks Act, 1999 against the order dated 05.4.2010 passed by the second respondent dismissing opposition No.731657 to application No.694185 in Class 3.

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For Appellant	:	Mr.S.Ravi, SC for Mr.A.Venkatesh Kumar Mr.R.Sanjeev & Mr.A.Shravan
For R1	:	Served & No appearance
For R2	:	Mr.J.Madanagopal Rao, SPC

JUDGMENT

This appeal was originally filed before the Intellectual Property Appellate Board, Chennai against the order dated 05.4.2010 passed by the second respondent dismissing the opposition filed by the appellant to the application submitted by the first respondent for registration of the trade mark '***Nandini***' in Class 3. The appeal has been transferred to this Court and renumbered as (T)CMA(TM).No.112 of 2023.

2. Heard the learned Senior Counsel appearing on behalf of the appellant and the learned Senior Panel Counsel appearing for the second respondent. Though the first respondent was served, they had not chosen to contest the case effectively by engaging any counsel nor did the first respondent appear in person.

3. The facts leading to filing of this appeal are as follows:

(i) The appellant is a federation of milk producers in Karnataka

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engaged in the procurement, distribution and supply of milk and milk products and allied goods and services in the State of Karnataka and other States in India. The appellant has been using the trade mark '***Nandini***' for all their products since 1983. As a result, this trade mark is a well known and a house hold name in the State of Karnataka and the neighbouring States in respect of milk and milk based products.

(ii) The first respondent appellant secured a copy right registration in respect of various labels, the prime feature of which is the mark '***Nandini***' in the year 1985. The first respondent is also a registered proprietor of the registered trade mark '***Nandini***' under registration No.501980 from the year 1988.

(iii) The appellant came across an advertisement of an identical mark in the trade mark journal in the name of the first respondent, which claimed proprietorship in respect of agarbatis and doops. In view of the same, the appellant filed opposition and raised various objections under Sections 9, 11, 11(a) and 18 of the Trade Marks Act, 1999 (for brevity, the Act). However, the opposition filed by the appellant came to be rejected by the second respondent vide the impugned order dated 05.4.2010. Aggrieved by that, the above appeal

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has been filed by the appellant under Section 91 of the Act.

4. This Court has carefully considered the submissions of the learned Senior Counsel appearing on behalf of the appellant and the learned Senior Panel Counsel appearing for the second respondent and perused the materials available on record and more particularly the impugned order passed by the second respondent.

5. There is no dispute with regard to the fact that the appellant's mark is '***Nandini***'. The appellant has also registered the trade mark, which is evident from the certificate issued by the Registrar of Trade Marks concerned.

6. In so far as the first respondent is concerned, they also used the very same word '***Nandini***' along with devices of flowers, leaves, birds and other expressions. The appellant has been using the trade mark '***Nandini***' in respect of milk and other dairy products. The first respondent applied for registration of the label mark '***Nandini***' for agarbatis and doops, which fall under Class 3. The trade mark has

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been issued in favour of the appellant under Clause 29. Ultimately, the second respondent rejected the opposition filed by the appellant mainly on the ground that the name '***Nandini***' is a personal name, that no one could claim an exclusive right over that word, that the first respondent's label mark was for a completely different product and that the resemblance of rival marks was minimal, that there was no likelihood of causing any confusion in the minds of the customers and that therefore, the opposition raised by the appellant was rejected.

7. Without further ado, this Court can straight away take note of the judgment of the Hon'ble Apex Court in ***Nandhini Deluxe Vs. Karnataka Cooperative Milk Producers Federation Ltd. [reported in 2018 (9) SCC 183]***, which also involved the very same appellant, which opposed the allotment of the trademark ***'NANDINI'*** in favour of another party. The Hon'ble Apex Court, while setting side the order passed by the High Court, held as follows:

> "***25.*** *We have duly considered the aforesaid submissions of both the counsel with reference to the record of the case. Though the detailed arguments are advanced touching upon various aspects, it is not necessary to traverse through all*

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these arguments. We proceed on the presumption that the trade mark "NANDHINI", which is registered in the name of the appellant has acquired distinctiveness though the appellant disputes the same. Otherwise also there is no challenge to the registration of this name in favour of the respondent. The moot question, according to us, is as to whether the appellant is entitled to seek registration of the mark "NANDHINI" in respect of the goods in which it is dealt with, as noted above. Therefore, the fulcrum of the dispute is as to whether such a registration in favour of the appellant would infringe rights of the respondent. The entire case of the respondent revolves around the submissions that the adaptation of this trade mark by the appellant, which is phonetically similar to that of the respondent, is not a bona fide adaptation and this clever device is adopted to catch upon the goodwill which has been generated by the respondent in respect of trade mark "NANDINI". On that premise, the respondent alleges that the proposed trade mark "NANDHINI" for which the appellant applied for registration is similar trade mark in respect of similar goods and, therefore, it is going to cause deception and confusion in the minds of the users that the goods in which the appellant is trading, in fact, are the goods which belong to the respondent. Precisely, it is this controversy which needs to be addressed in

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the first instance.

26. *Before we answer as to whether the approach of IPAB and the High Court in the impugned orders is correct, as contended by the respondent or it needs to be interdicted as submitted by the appellant, some of the relevant facts about which there is no dispute, need to be recapitulated. These are as follows:*

26.1. *The respondent started using trade mark in respect of its products, namely, milk and milk products in the year 1985. As against that, the appellant adopted trade mark "NANDHINI" in respect of its goods in the year 1989.*

26.2. *Though, the respondent is a prior user, the appellant also had been using this trade mark "NANDHINI" for 12-13 years before it applied for registration of these trade marks in respect of its products.*

26.3. *The goods of the appellant as well as the respondent fall under the same Classes 29 and 30. Notwithstanding the same, the goods of the appellant are different from that of the respondent. Whereas the respondent is producing and selling only milk and milk products, the goods of the appellant are fish, meat, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, edible oils and fats, salad dressings, preserves, etc. and it has given up its claim qua milk and milk products.*

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26.4. *Insofar as application for registration of the milk and milk products is concerned, it was not granted by the Trade Marks Registry. In fact, the same was specifically rejected. The appellant was directed to file the affidavit and Form 16 in this behalf to delete the goods "milk and milk products" which affidavit was filed by the appellant. Further concession is already recorded above.*

26.5. *NANDINI/NANDHINI is a generic term, it represents the name of goddess and a cow in Hindu mythology. It is not an invented or coined word of the respondent.*

26.6. *The nature and style of the business of the appellant and the respondent are altogether different. Whereas the respondent is a Cooperative Federation of Milk Producers of Karnataka and is producing and selling milk and milk products under the mark "NANDINI", the business of the appellant is that of running restaurants and the registration of mark "NANDHINI" as sought by the appellant is in respect of various foodstuffs sold by it in its restaurants.*

26.7. *Though there is a phonetic similarity insofar as the words NANDHINI/NANDINI are concerned, the trade mark with logo adopted by the two parties are altogether different. The manner in which the appellant has written NANDHINI as its mark is totally different from the style adopted by the respondent for its mark*

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"NANDINI". Further, the appellant has used and added the word "Deluxe" and, thus, its mark is "NANDHINI DELUXE". It is followed by the words "the real spice of life". There is device of lamp with the word "NANDHINI". In contrast, the respondent has used only one word, namely, NANDINI which is not prefixed or suffixed by any word. In its mark "cow" as a logo is used beneath which the word NANDINI is written, it is encircled by egg shape circle. A bare perusal of the two marks would show that there is hardly any similarity of the appellant's mark with that of the respondent when these marks are seen in totality."

8. The Hon'ble Apex Court rejected the opposition made by the appellant since it was found that the word ***'NANDINI'*** was a generic term, that it represented the name of a goddess and that the said name was sought to be used by the applicant therein with respect to various food stuff sold by their restaurants. The Hon'ble Apex Court also took into consideration a suffix added to the word ***'NANDINI',*** which was sought to be registered as ***'NANDINI DELUXE',*** which was also found not to be phonetically similar.

9. The learned Senior Counsel appearing on behalf of the

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appellant placed strong reliance on paragraph 26.7 of the above judgment of the Hon'ble Apex Court and submitted that the present case is factually on a different footing.

10. The Hon'ble Apex Court took into consideration the fact that the offending mark was ***'NANDINI DELUXE'*** and held that the trade mark with logo adopted by both the parties were altogether different and that the manner, in which, the word ***'NANDINI'*** was written by the respondent therein was completely different from the manner, in which, it was written by the appellant therein. The Hon'ble Apex Court also found that the word ***'NANDINI'*** has been suffixed with the word ***'DELUXE'*** and that the two marks hardly had any similarity when they were seen in totality. Hence, the claim made by the appellant was rejected.

11. In the case in hand, admittedly, the product, for which, the first respondent had applied for registration of the trade mark is different. The only distinctive factor in the case in hand from that of the case before the Hon'ble Apex Court is the manner, in which, the first respondent had chosen the name of '***nandini***' without any prefix

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or suffix and has also adopted the same style of writing the word '***Nandini***' – all in small letters.

12. The mark that was sought to be registered by the first respondent is scanned and extracted as follows:



13. The trade mark that was already registered in favour of the appellant is scanned and extracted as follows:



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14. Phonetically, the word '***Nandini***' is the same and it has also been written in the same style in the offending mark of the first respondent. Considering the fact that appellant developed a huge reputation with the mark '***Nandini***' for a long period of time, the phonetic similarity and the manner, in which, the first respondent has written the word '***Nandini***' as its mark would certainly make the offending mark deceptively similar and a customer, who is well versed with the mark of the appellant, will be certainly misled by the style adopted by the first respondent in writing the word '***Nandini***' and also its phonetic resemblance. This is the most important distinguishing feature from what was considered by the Hon'ble Apex Court in the said judgment.

15. In the light of the above discussions, this Court finds that the second respondent has not taken into consideration the above crucial aspects and has erroneously rejected the opposition filed by the appellant.

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16. Accordingly, the above civil miscellaneous appeal stands allowed and the impugned order dated 05.4.2010 passed by the second respondent is hereby set aside. No costs.

19.1.2026

To
The Deputy Registrar of Trade Marks
Office of the Trade Marks Registry
I.P.Building, GST Road, Guindy,
Chennai-600032.

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