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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:12.10.2026	Pronounced on: 30.10.2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

CMA (TM) No.13 of 2026

Ramesh Bishnoi
No.240/443, 1st Floor,
Sydenhams Road,
Apparao Gardens, Choolai,
Chennai - 600 112.

..Appellant(s)

Vs

The Registrar of Trade Marks,
Office of the Trade Marks Registry,
Intellectual Property Buildings,
G.S.T. Road, Guindy,
Chennai - 600 032.

..Respondent(s)

PRAYER: This Civil Miscellaneous Appeal is filed under Section 91 of the Trade Marks Act, 1999 to allow the Appeal against the order of the Respondent dated 02.03.2026 and set aside the same and accept the Trade Mark Application No.4869008 filed on 18.02.2021 and advertise in the Trade Marks Journal.

For Appellant(s): Mrs.Gladys Rosette C.Daniel
For Respondent(s): Mr.S.Nelson,
Central Government Standing Counsel

JUDGEMENT

The above appeal has been preferred against the order dated 02.03.2026 passed by the Registrar of Trade Marks in Trade Mark Application No.4869008.

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2. I have heard Mrs.Gladys Rosette C.Daniel, learned counsel for the appellant and Mr.S.Nelson, learned Central Government Standing Counsel for the respondent.

3. Submission of Mrs.Gladys Rosette C.Daniel, learned counsel for the appellant are summarised as follows:-

The appellant has adopted the Trade Mark, ELITE (Device), along with the tagline "Light Up Your Life" under Class 11. The appellant filed a Trademark Application on 31.03.2016 in Application No.3224642 for "ELITE", "Light up Your Life"(Device) in Class 11, claiming that the appellant has been using the Trademark, ELITE ever since 2009.

4. One Mrs.Saroj Sharma, in and by Application No.3557184, again under Class 11, had applied for registration of Mark "ELITE" on 25.05.2017. It is the further contention of the learned counsel for the appellant that a partnership firm was constituted under the name and style of "M/s.Micro Lights" on 05.10.2017 in whose favour, the appellant granted licence of the trademark "Elite Light Up Your Life" (Device) on 09.10.2017. However, the Trade Mark Application No.3224642 in Class 11, for "Elite Light Up Your Life" (Device), was refused by the respondent citing the objection that the mark has already been registered in the name of Mrs.Saroj Sharma. The appellant

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issued a lawyers notice to the said Mrs.Saroj Sharma on 19.01.2021, to which a reply notice was also received by the appellant on 02.02.2021. It is thereafter on 18.02.2021 that the appellant filed the impugned Application for "Elite" (Device) under Class 11 in Application No.4869008. An examination report was issued on 24.02.2021, to which the appellant sent a reply on 04.03.2021. In the meantime Mrs.Saroj Sharma, proprietorix of Vinayak Electricals India, issued a lawyer's notice on 08.03.2021, to which the appellant sent a detailed reply on 15.03.2021. Pursuant to the exchange of the notices, the said Saroj Sharma, objected to the registration of appellant's Trade Mark "Elite" (Device) under A.No.4869008 under Class 11, on 16.04.2021. In response to the said objections, the appellant filed a reply along with supporting documents on 23.06.2021 and ultimately, the respondent refused the appellant's objection.

5.Mrs.Gladys Daniel, learned counsel would further contended that as against the said refusal of the appellant's application, the appellant preferred an Appeal before this Court and by order dated 14.03.2024, the impugned order dated 14.09.2023 passed by the respondent was set aside and the matter was remitted for fresh consideration. On 06.12.2024, the respondent proceeded to declare the withdrawal letter filed by the objector, Mrs.Saroj Sharma as void and infructuous and after conducting a virtual hearing, as permissible under Rule 115 of the Trade Marks Rules, 2017, (in short 'Trade Marks Rules') the respondent once again refused to register the appellant's application "Elite"

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(Device) by order dated 02.03.2026, which is presently under challenge in the present appeal.

6. It is the further contention of the learned counsel for the appellant Mrs.Gladys Daniel that even the impugned order dated 02.03.2026 was not communicated to the appellant and the appellant learnt about it only after conducting an independent search with regard to the status of the Trade Mark Application and thereafter, had to repeatedly follow up with the respondent to obtain a copy of the order to enable the appellant to prefer the present appeal.

7. Mrs.Gladys Daniel, learned counsel for the appellant would firstly contend that the objector Mrs.Saroj Sharma was herself doing business with the appellant and the respondent, without even appreciating the documentary evidence relied on by the appellant, has erroneously refused the appellant's application. Inviting my attention to the impugned order in this regard, Mrs.Gladys Daniel, learned counsel would contend the order to be summary and unreasoned. She would further contend that under the provisions of the Trade Marks Act, 1999, (in short 'Trade Marks Act'), even an applicant who is able to substantiate and establish honest, concurrent and uninterpreted usage is entitled to registration of Trade Mark, under Section 12 of the Trade Marks Act and therefore the appellant's request, could not have refused the application at the threshold. It is therefore the primordial submission of Mrs.Gladys Daniel,

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that the impugned order is in fact, premature and the rejection of the appellant's Application is wholly unsustainable. She would further state that even after causing an advertisement in the Trademarks journal, any person is entitled to object and that would include Mrs.Saroj Sharma, who had earlier objected to the registration of the mark as prayed for by the appellant and she would therefore contend that even the said objector will not be in any manner prejudiced, as her rights are intact and she could always object to the registration of the mark at the appropriate stage, post advertisement in the Trademarks journal.

8. Even on merits, it is the contention of Mrs.Gladys Daniel, that the notices were exchanged way back in the year 2021 and despite passage of five years, the objector, Mrs.Saroj Sharma has not initiated any suit or proceedings against the appellant and there is also a bar of limitation under Section 33 of the Trade Marks Act. She would further contend that the only step that has been taken by the objector is to initiate pre-suit mediation proceedings as contemplated under the Commercial Courts Act and as on date, there is no interim order operating against the respondent or even the appellant and therefore, the learned counsel contends that there is absolutely no legal bar or impediment for the respondent to entertain the application and proceed for causing the advertisement in the Trademark journal.

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9. The learned counsel would also take me through the whatsapp chat between the husband of the objector, Mrs.Saroj Sharma and appellant to fortify her submission that the appellant is not a stranger to the objector, Mrs.Saroj Sharma and that the respondent is well aware of the business being carried on by the appellant under the name and style of "Elite" (Device) and the long silence on the part of the objector also has to be necessarily taken into account, which unfortunately, has not been addressed by the respondent, in the impugned order.

10. The learned Central Government Standing Counsel appearing for the respondent, Mr.Nelson, would submit that even as early as on 24.02.2021, the respondent had addressed a communication to the appellant's attorneys, in connection with the Application No.4869008 in Class 11, had objected to the registration of the Mark, in view of Section 11(1) of the Trademark Act, contending that the mark which is sought to be registered by the appellant is identical with or similar to earlier marks in respect of identical or similar description of goods or service and that there is a likelihood of confusion on the part of the public. He would also point out that in the examination report, the Registrar of Trademarks has also set out details of same/similar trademarks which have already been registered for same/similar, goods/services. He would further rely on Section 48 as well as 49 of the Trademarks Act and contend that

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no user affidavit has also been filed by the appellant and therefore, there is absolutely no error committed by the Registrar of Trademarks in refusing the Application for registration of the applicant's Trademark. He would therefore pray for dismissal of the appeal.

11. I have carefully considered the submissions advanced by the learned counsel on either side.

12. Firstly, it is to be remembered that the stage at which the application of the appellant has been refused is at the stage of the examination report, prior to causing of an advertisement in the Trademark journal. On going through the documents that have been filed in support of the claim of the appellant, it is clear the appellant has been using the mark "ELITE" as early as from 2009 onwards. In fact, as rightly pointed out by Mrs.Gladys Daniel, the whasapp chat between the appellant and husband of the first objector, Mrs.Saroj Sharma, also only goes to show that the objector cannot feign ignorance about the use of the mark "ELITE" by the appellant. Whatsapp chat messages are way back in the year 2019 and pursuant to such whatsapp messages alone, the wife of Mr.Mool Chand Sharma viz., Mrs.Saroj Shama, has obtained registration certificate in Class 11 dated 23.10.2019. Though there have been exchange of notices even in January and February 2021, despite knowing the fact that the appellant has been using the mark "ELITE", Mrs.Saroj Sharma, has not taken

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any steps for a clear five years and more and as fairly conceded by Mrs.Gladys Daniel, learned counsel, a suit has been filed recently and it is only at the pre-suit mediation stage and suit is not even numbered. However, there is no interim injunction operating in favour of the objector, Mrs.Saroj Sharma as on date.

13. As regards the impugned order, the respondent has rightly contended that the appellant has erroneously applied objections under Section 11 (1) of the Trademarks Act, citing similarity of marks as well as similarity of goods and services covered under such marks and that the same would cause confusion in the minds of the public. Under Section 12 of the Trademarks Act, even when it is found that there has been an honest and concurrent use or other special circumstances, then also, the Registrar can permit registration of the mark in the name of more than one proprietor, even though the marks are identical or similar and already registered with the Registrar. The impugned order does not even address the possibility of registration of the appellant's mark under Section 12, which in any event, can be pressed into service, only after the mark is advertised in the Trade Marks journal and there are no objections to the same. Therefore, it was clearly premature on the part of the Registry viz., the respondent to have put Section 11(1) of the Trademarks Act, against the appellant.

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14. As regards the objections under Section 48 and 49 of the Trademarks Act, I do not see the same would have any application to the facts of the present case. Under Section 48 of the Act, a person other than the registered proprietor of the Trademarks, viz., a registered user thereof, in respect of any or all of the goods or services in respect of which, the Trademark is registered can invoke this provision. This deals with cases where the registered proprietor of the mark has entered into an agreement with the user who seeks registration of such use. In other words, Sections 48 and 49 of the Trademarks Act, would come into play where the applicant seeking registration is a licensee. However in the present case, the appellant admittedly, claims to an independent right over the mark "ELITE" and therefore, I am unable to countenance the objections of Mr.Nelson, learned Central Government Standing Counsel that since user affidavit has not been filed in compliance with Sections 48 and 49 of the Act, the impugned order has to be necessarily sustained.

15. In the light of the foregoing discussions, I am satisfied that the impugned order is clearly perverse and does not even factor the express provisions of the Trade Marks Act and at the nascent stage, the respondent ought not to have invoked the bar under Section 11(1) of the Trademarks Act and put it against the appellant, to refuse the application as not registrable. The order is flawed for the various reasons discussed herein above and hence, as already dealt with, no prejudice is caused to any person, including the person

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who had objected in 2019 or has got a registration in the year 2019, since it would always be open to any person including the earlier objector to object once the mark is put up for advertisement in the Trademarks journal.

16. In the light of the above, I am inclined to set aside the impugned order dated 02.03.2026 and ***allow*** the Appeal. Consequently, the respondent shall proceed to cause advertisement of the appellant's mark in the Trade Mark journal and subject to objections that may be forthcoming for the said advertisement, the application of the appellant shall be decided in accordance with law. No costs.

30-10-2026

Index: Yes
Speaking order
Neutral Citation: Yes

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To
The Registrar of Trade Marks,
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P.B.BALAJI J.

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Pre-delivery Order in

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