

**IN THE COURT OF JUDGE, COMMERCIAL COURT
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**
Judge,
Commercial Court (District Judge Cadre),
Coimbatore.

Saturday, the 7th Day of February, 2026

I.A. No.2 of 2025

in

C.O.S. No.39 of 2025

[CNR No.TNCB22-000085-2025]

Mr. V. Arun Kumar,
Trading as M/s ARS Engineering, ... Petitioner / Plaintiff

// Vs //

Mr. Sundarraaj,
ARS Engineering Works, ... Respondent / Defendant

The petition came up for final hearing before me on 30.01.2026 in the presence of Thiru.**V.Ramachandran and Ms. U.Aiswarya, Advocates**, for the petitioner / plaintiff and Thiru.**R.V.Gurunathan, Advocate** for the respondent / defendant and upon perusing the records, hearing enquiry on both sides and having stood over for consideration till this date, this Court doth passes the following:-

ORDER

The petition has been filed by the petitioner / plaintiff under Section 39 Rule 1 and 2 r/w Section 151 of C.P.C. seeking for the relief of an **Ad-interim injunction** restraining the respondent by himself or through his agents (i) from

using directly and indirectly the Domain name "http://arsengineeringworks.com/"; further for the relief of Ad-interim injunctions restraining the respondent and his men (ii) from manufacturing, selling, advertising, and offering for sale by infringing the plaintiff's Registered Trade Mark 'ARS Engineering' in relation to machineries or by using 'ARS' or any other mark or marks which are in any way visually, phonetically or deceptively similar to the plaintiff's Registered Trade Mark "ARS Engineering" with or without Device or in any manner in infringing the plaintiff's Registered Trade Mark; and further for the relief of Ad-interim injunction restraining the respondent and his men (iii) from in any manner passing off their goods bearing the plaintiff's Trade Mark "ARS Engineering" or by using 'ARS any other mark or marks which are in any way visually, phonetically or deceptively similar to the Plaintiff's Trade Mark "ARS Engineering" with or without Device as and for the device of the plaintiff by selling or offering for sale or in any manner advertising the same and pass such further other orders.



2. The petition averments which are found essential for the disposal of the petition is that:-

It is the submission of the petitioner that if the interim injunction is not granted, the petitioner would be greatly prejudiced and would be put into irreparable loss due to confusion of identical Trade Marks prevailing in the

market and the domain name used by the defendant. Hence the petitioner submits that the petitioner is entitled to seek for the relief of interim injunction against the respondent / defendant for the infringement of registered trade mark of ARS and for passing off. It is the submission of the petitioner that the respondent is infringing the petitioner's right by using and adopting the identical trade mark. Further it is submitted by the petitioner that the act of the respondent is a clear case of infringement causing substantial injuries to the petitioner and submit that the injury caused by the respondent is irreparable and could not be compensated and seek for to stop the said illegal acts of the respondent and submit that the balance of convenience is also in favour of the petitioner. Further it is the contention of the petitioner that the respondent is violating the Law and seek for to grant an order of injunction restraining the respondent from in any infringing the petitioner's registered trade mark and for passing off it and seek for to pass the order of interim injunction allowing the petition by granting the aforementioned reliefs.

3. By denying the petition averments the respondent/defendant has filed the counter. The sum and substance of the counter statement averments which are found essential for the Disposal of the petition is that:-

a) It is the submission of the respondent that the petitioner / plaintiff has failed to satisfy the three mandatory Judicial Test required under Order XXXIX Rule 1 & 2 of C.P.C. and submit that the present application have been

filed to enforce a registration that is subservient to the respondent / defendant's long standing vested common law rights. Further it is the submission of the respondent that the respondent / defendant is using the mark "ARS" / "ARS ENGINEERING WORKS" since 31.12.2012 and the same could be ascertained from the Commercial Sales Tax certificate and also from the contemporaneous commercial records and the respondent claims that the respondent is the prior user to the plaintiff's use of the registered trade mark of ARS Engineering. The respondent also seeks protection under Section 34 of the Trade Marks Act, 1999 and submit that it is settled position of law that the first user is the superior to all others including the registered proprietor and state that the prima facie case of the plaintiff is extinguished at the threshold. Further, it is submitted that the passing off of relief is a common law remedy and the same protects the goodwill of the respondent in the market and submit that the respondent has the superior common law right than the petitioner and he has every right to protect his own goodwill.

b) Further, it is submitted by the respondent that the petitioner has adopted the mark subsequent to the respondent and was also aware of the trade environment and submit that any confusion prevailing in the market is due to the plaintiff's subsequent adoption of the identical mark of the respondent and submit that the same is liable to be removed from the Register. Further the respondent submit that the ARS Engineering Works is accustomed to the

respondent since 2012 and submit that the respondent is thirteen years old and any Order of injunction would put the respondent in the hardship of closing the business and submit that the rights are yet to be confirmed. Further it is submitted that the the plaintiff is claiming the continuous use since 2014 and this remains subsequent to the respondent's established adoption in year 2012 and submit that the petitioner / plaintiff lacks prima facie case, balance of convenience and irreparable loss and injury and submit that the petition is liable to be dismissed and sought for to dismiss the petition.

4. Point for consideration:-

Whether the petition could be allowed?

Point:-

5. It is the submission of the petitioner / plaintiff that the petitioner concern / company have been formed in the year 2014. Whereas the respondent / defendant entity have been formed in the year 2012. It is the submission of the respondent that the business of the respondent and the business of the petitioner is entirely different and submit that the respondent seeks for protection of using the name of ARS Engineering as a prior user as contemplated under Section 34 of the Trade Marks Act, 1999. Mentioning that the prima facie case, balance of convenience and irreparable loss and injury do not lie in favour of the petitioner the respondent has sought for to dismiss this petition.

6. Though the petitioner in the plaint have mentioned that the petitioner and the respondent business are one and same, to show that the petitioner business and the respondent business is one and same, the petitioner have not filed documents in support of their stand. Apart from that the respondent in the written statement and also in the counter have mentioned that their business has been started in the year 2012 in the name of ARS Engineering Works. When the respondent has claimed that their entity has been formed and registered in the year 2012, if it established that it is formed in the year 2012, the right of the respondent would be protected on the ground of prior user. The said fact of prior user cannot be decided in the present proceedings. For which this Court would consider that the substantial right of the parties could be decided only after the Trial in the suit.

7. Morefully this Court would also consider that prima facie it is for the petitioner to establish their right to seek for the preventive relief and it could be considered only when their right over registered trade mark is infringed and it is not exempted by the right of prior user. Since the claim of right of the respondent is based on the right of prior user, the prima facie case would be established only when the question of prior user is decided. Accordingly this Court is of considered stand that the said question of prima facie case could be decided only after the dispute regarding the prior user is given quietus. But in the present suit proceedings the said factor could be decided only after the Trial

in the suit. Hence this Court would consider appropriate that the petition is liable to be dismissed.

9. In the result the petition is dismissed. No Costs.

Dictated to the Steno-Typist, computerized by him directly, Corrected and Pronounced by me, on the 7th Day of February 2026.

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore

List of Witnesses and Documents:- Nil

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore