



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM) No. 243 of 2023

M/s Shubham Goldiee Masale Pvt Ltd
51/40, Goldiee House
Nayaganj, Kanpur, U.P

..Petitioner

Vs

1. M. Nageswara Rao Gupta
Trading As Suraksha Pharma
101, Sai Ram Estates,
Behind Chermas, Ameerpet,
Hyderabad - 500 076 AP
2. The Registrar of Trade Marks
Intellectual Property Office Building,
G.S.T. Road, Guindy,
Chennai - 600 032

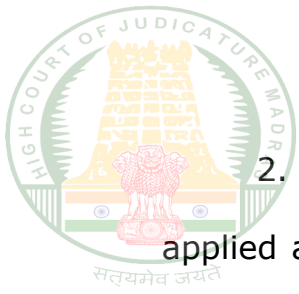
..Respondents

For Petitioner: Mr.Somnath De
for M/s. K.G. Bansal and S.K. Bansal

For Respondents: Mr.K.Mohan Kumar for R1
Mr. Rajesh Vivekanandan,
Deputy Solicitor General for R2

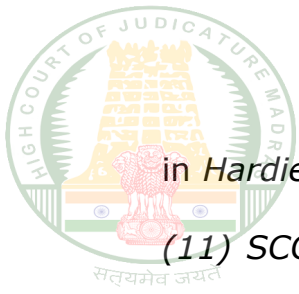
ORDER

The rectification petition has been filed both under Sections 47 and 57 of the Trade Marks Act, 1999 (the TM Act). The petitioner has obtained registrations in multiple classes, including class 30, and uses the mark in relation to spices and a range of food products. The contesting respondent applies the impugned device mark in relation to pharmaceutical products and has obtained a registration in class 5.



2. Relying on the nature of goods to which the rival marks are applied and the classes in which registrations have been obtained by the adversaries, learned counsel for the contesting respondent submits that the petitioner does not qualify as a 'person aggrieved'. In support of his contention, he relies upon the definition in *Powell vs. Birmingham Vinegar Brewery Co* [11 RPC4 (H.L.)] to contend that the petitioner should be in the same trade as the person who has registered the impugned mark. He also relies upon the judgment of the Supreme Court in *Gupta Industrial Corporation Vs. Metal Goods Mfg. Co.(P) Ltd. and another* (AIR 1971 SC 898), particularly paragraph 9 thereof. Referring to the judgment of the Supreme Court in *Kabushiki Kaisha Toshiba vs. Tosiba Appliances co. and Others* (AIR 2009 SC 892), he contends that the petitioner has failed to establish that he is the 'person aggrieved' either for purposes of Section 47 or Section 57 of TM Act. He concluded his submission by relying on the judgment of the Supreme Court in *Vishnudas Kishendas Vs. Vazir Sultan Tobacco Co. Ltd.* [1996 (16) PTC 512(SC)] to contend that rectification was allowed on the ground that the respondent was not using the mark in relation to the full range of tobacco products.

3. In response, learned counsel for the petitioner submits that the petitioner is the prior user and has obtained registration in multiple classes. Relying on Section 11(2) of the TM Act, he contends that the petitioner is entitled to seek rectification even if the goods or services are not similar. He also places reliance on the judgment of the Supreme Court



in *Hardie Trading Ltd. and Anr vs Addisons Paint and Chemicals Ltd (2003 (11) SCC 92) [Hardie]*. Learned counsel for the petitioner also adds that

the petitioner's trade mark has been declared as a well known mark subsequently.

4. As recorded at the outset, this is a composite petition under Sections 47 and 57 of the TM Act. In *Hardie*, the Supreme Court construed the expression 'person aggrieved' differently for purposes of Sections 47 and 57. In relation to an action under Section 57, the Supreme Court held that the provision should be construed liberally.

5. In the case on hand, the petitioner asserts that it has used the mark since 1980 in relation to a range of products. At this preliminary juncture, it is not possible to ascertain whether the petitioner's trade marks qualify as 'well known marks' or whether they are otherwise entitled to class and goods agnostic protection. If so, the petitioner would undoubtedly qualify as a 'person aggrieved'. Even otherwise, as the prior user in relation to food products, in my view, the petitioner satisfies the threshold requirements to maintain this action. Therefore, I am unable to accept the contention of the contesting respondent that the petitioner does not qualify as a 'person aggrieved'. Hence, the preliminary objection is overruled.

6. List on 08.04.2026.

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SENTHILKUMAR RAMAMOORTHY, J.

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