



(T)OP(TM)/388/2023
(ORA/102/2020/TM/CHN)
and W.P.No.27500 of 2021
and W.M.P.No.29025 of 2021

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N.SESHASAYEE, J.

The case of the petitioner is that the petitioner has developed a mark 'Zinda Tilismath'. It is a label mark and it is also a part of its packing whose colour scheme appears to be a blend of saffron and mustard. The 1st respondent has also registered a mark which reads 'Zinda Tel' with the same colour scheme. The learned counsel for the petitioner seeks some time to file the certified copies of those documents which he had filed before the District Court in Delhi, before which the petitioner herein has laid a suit for infringement.

2.This Court briefly engaged in this case and required the learned counsel for the petitioner to introduce the case. The learned counsel brought to the notice of the Court the mark of the petitioner as well as that of the 1st respondent. Now, in this genre of litigations where a proprietor of a mark seeks rectification of register on the allegation that such registered mark of



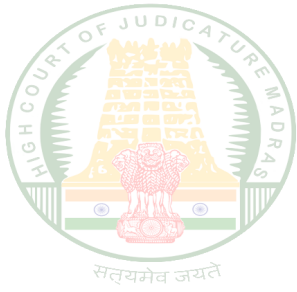
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the opponent is deceptively similar to its own mark, the ultimate tool of which the judiciary employs is its own eyes and ears. Evidence regarding user may have some influence and that essentially will operate as to whether the Court may have to consider invoking Section 12 of the Trade Marks Act, 1999.

3.*Prima facie* when this Court made the comparison, it is more than satisfied that the mark of the 1st respondent bears striking resemblance including the colour scheme, which in its opinion holds every possibility of misleading a gullible consumer. Indeed, if there can be a tie up between the manufacturer of Ayurvedic preparation and the dispensary where it is sold, then a consumer can be easily tripped. This Court underscores that this is its *prima facie* view of the matter.

4.This Court now requires the learned counsel for the 1st respondent to take more responsible instructions from his clients on the issue. It is underscored that the institution of Courts are established only to solve problems or issues



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which may require a third party arbiter to resolve it. Any other motive to use the institution may involve an abuse of judicial process, for this Court very firmly holds a view that an avoidable litigation must be avoided and every citizen of this country must take responsibility to follow this.

5.Post the matter under the caption "for orders" on 15.03.2024.

04.03.2024

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