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CMA(TM)No.16 of 2025

In the High Court of Judicature at Madras

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| Reserved on<br><b>22.01.2026</b> | Delivered on:<br><b>27.01.2026</b> |
|----------------------------------|------------------------------------|

Coram :

The Honourable **Mr.Justice N.ANAND VENKATESH**

**CMA (TM) No.16 of 2025**

Perundurai Chennimalai Gounder  
Duraismy  
Trading as Sakthi Trading Company  
6, Mamarathupalayam  
Erode-638 004, Tamil Nadu.

...Appellant(s)

.Vs.

1.The Registrar of Trade Marks  
Office of the Trade Mark Registry  
IP Office Building, G.S.T.Road  
Guindy, Chennai 600 032.

2.Kumar Food Industries Limited  
71/1, Saras Pur, Delhi 110 042.

...Respondents

Appeal filed under Section 91 of the Trade Marks Act, 1999, to allow this Appeal by setting aside the order dated 09.05.2025 passed by the 1<sup>st</sup> respondent abandoning Application No.891453 and consequently directing the 1<sup>st</sup> respondent to reinstate its registration as granted under certificate no.400179 dated 15.07.2005.



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For Petitioner : Mr.S.Diwakar

For Respondents : Mr.C.Samivel  
Senior Panel-Central  
Government Standing Counsel  
for R1

Mr.M.K.Miglani for R2

### **JUDGMENT**

This appeal has been filed under Section 91 of the Trademarks Act, 1999 [for brevity hereinafter referred to as ‘the Act’] against the proceedings of the 1<sup>st</sup> respondent dated 09.05.2025 and for a consequential direction to the 1<sup>st</sup> respondent to reinstate the registration of the appellant as granted under Certificate No.400179 dated 15.07.2005.

2.The appellant is a manufacturer of food products. In the course of business, the Trademark “SAKTHI” was adopted by the appellant. The food products included varieties of spice and masala powders, cereals, pickles, edible oil, flour and papad. The appellant was trading across India and the goods were also exported to foreign countries.



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3.The appellant had adopted the mark “**SAKTHI**” in the year 1977 and it was used openly, continuously and extensively without any interruption.

4.With a view to obtain statutory protection for the said Trademark, the appellant applied for and obtained registration of the mark “**SAKTHI**” and it’s formatives under various Classes including Class 30 in India.

5.Apart from the above, the appellant also applied for Copyright of the unique style, distinctive colour scheme and getup of its label “**SAKTHI**” and obtained registrations under the Copyright Act, 1957.

6.The appellant filed an application for registration of its mark “**SAKTHI**” under Class 30 in respect of rice on 13.12.1999. The said application was accepted and after following the due process as mandated



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under the Act and Rules, the application was advertised in the Trademark Journal dated 16.10.2002 and thereafter registration was granted on 15.07.2005 *vide* Certificate No.400179 which was renewed from time to time.

7.On 06.02.2023, a public notice was issued by the Controller General of Patent, Design and Trademarks in Trademark Journal No.2090 dated 06.02.2023, wherein a list of applications were scheduled to be abandoned for failure to file counter statement in oppositions filed. In the said public notice, it was informed that an opportunity is provided for the applicants who are aggrieved on account of their application being incorrectly listed thereunder and they can bring the same to the attention/notice of Registrar of Trademarks by filing a correspondence with respect to the said grievance in the e-mail address provided, within 30 days of publication of the said public notice. To the shock and surprise of the appellant, the impugned application was also mentioned in the list. According to the appellant, based on the application, the Trademark had already been registered and therefore it ought not to have been made part of the list published by the Controller General.



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8.The appellant immediately caused verification of the online records and came to know for the first time that the Certificate of Registration dated 15.07.2005 was unilaterally cancelled by the 1<sup>st</sup> respondent without providing any opportunity to the appellant. The appellant also came to know that a notice of opposition was filed by the 2<sup>nd</sup> respondent which was taken on record on 09.02.2018 after the advertisement of the impugned application.

9.The appellant made a representation dated 20.02.2023 to the 1<sup>st</sup> respondent providing the entire facts and also the grievance of the appellant and the appellant prayed for restoration of the Trademark registration. A similar representation was also made on 27.02.2023.

10.The appellant came to know that the public notice dated 06.2.2023 and the subsequent public notice dated 27.3.2023 issued by the Controller General of Patent, Design and Trademarks was challenged before the Delhi High Court. During the pendency of the proceedings, a representation was



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made before the Court by the Senior Panel-Central Government Standing Counsel that the Controller of Patents undertakes to withdraw the two impugned public notices within 10 days. Recording the same, the writ petition was disposed of on 13.04.2023.

11.Inspite of the above development, the appellant received an order passed by the 1<sup>st</sup> respondent abandoning the application submitted by the petitioner for failure to file counter statement in the Opposition No.920373. Aggrieved by the same, the present appeal has been filed before this Court.

12.When this appeal came up for final hearing on 11.12.2025, this Court on hearing both sides passed the following order:

Heard the learned counsel on either side.

2.The entire controversy in this appeal revolves around the fact that the appellant was in fact granted Certificate of Registration of Trade Mark on 15.07.2005 and thereafter, it has been cancelled, without notice to the appellant.

3.Learned counsel for the appellant submitted that a public



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notice dated 06.02.2023, was issued by the Government of India, by giving particulars of those applications which were deemed to have abandoned, in view of not filing reply for the opposition submitted. In this public notice, the application submitted by the appellant in application No.891453 also found place. Immediately, on coming to know of the same, the appellant submitted two representations on 20.02.2023 and 27.02.2023, respectively. There was no response from the 1st respondent. In the meantime, the two public notice that were issued by the Government of India was put to challenge before the Delhi High Court. One of the public notices that was put to challenge, was the notice dated 06.02.2023, which contained the application number of the appellant. In the course of hearing, the learned Central Government Standing Counsel made a submission that the Controller of Patents undertakes to withdraw both the public notices and to revert all the applications in respect of which notices have been issued to their original status within a period of 10 days. Recording the same, the writ petition was disposed of on 13.04.2023.

4.Learned counsel for the appellant submitted that in spite of such a submission made before the Delhi High Court, the impugned



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order dated 09.05.2025, came to be passed by the 1st respondent. Learned counsel for the appellant further submitted that even as per the online application that is available, no opposition was submitted insofar as application No.891453 is concerned and the so-called opposition only pertained to application No.3318553 and it was opposing the trade mark “MAHAVEER'S SHAKTI” and whereas, the application was submitted by the appellant for the trade mark “SHAKTHI”.

5.Per contra, the learned counsel for the appellant on behalf of the 2 nd respondent submitted that after the appellant submitted an application, it was advertised in the trade mark journal and the 2nd respondent submitted the opposition. Thereafter, notice was also issued to the parties on 25.02.2020, by fixing the date of hearing on 18.03.2020. Since the appellant did not file any reply for the opposition, the 1st respondent has rightly rejected the application, on the ground that the appellant has abandoned the claim.

6.Learned counsel for the 2nd respondent further submitted that there was a compromise between the parties and as per the compromise, the appellant was permitted to sell rice in the southern States and also export the same and if the appellant is willing to act as per the compromise, they can always submit a fresh application



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and the 2nd respondent will not have any objections in granting the trade mark.

7.Considering the rival submissions, this Court has to first satisfy itself, as to whether any opposition was in fact filed by the 2nd respondent for application No. 891453 and only if any such opposition has been filed, there will be some meaning in remitting the matter to the file of the 1st respondent. Learned counsel for the 2nd respondent submitted that the 2nd respondent has the necessary materials to substantiate that opposition was made for application No.891453 and that the same will be filed along with an affidavit.

8.In the meantime, the learned Central Government Standing Counsel appearing on behalf of the 1st respondent shall also take instructions.

9.Post this appeal under the caption “part heard cases” on 18.12.2025.

13.Pursuant to the above order, the 2<sup>nd</sup> respondent has filed an affidavit along with the relevant documents. The 2<sup>nd</sup> respondent has taken a stand that pursuant to the advertisement in the Trademark Journal, the 2<sup>nd</sup> respondent filed an opposition to the application of the appellant on



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09.02.2018. In view of the same, the learned counsel for the 2<sup>nd</sup> respondent contended that the 2<sup>nd</sup> respondent in fact submitted the opposition for the application of the appellant under Reference No.891453 in Class 30.

14.The learned counsel for the 2<sup>nd</sup> respondent further submitted that the various other oppositions were also filed for the applications submitted by the appellant and in many of those applications, the parties resolved the dispute amicably by permitting the appellant for sale only in the Southern States and for exporting the goods outside India. Subject to the same, the opposition was withdrawn.

15.The learned counsel for the 2<sup>nd</sup> respondent submitted that even in the present case, the appellant can sell the rice in the Southern States and also export the same and in such an event, the 2<sup>nd</sup> respondent will withdraw the opposition subject to the same condition.

16.The learned Senior Panel-Central Government Standing Counsel, pursuant to the earlier order, filed a set of documents. On carefully going

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through the same, the only document that is relevant for the purpose of this case is the notice of opposition that is said to have been served on the appellant and the appellant was called upon to file the counter statement for the opposition.

17.The learned Senior Panel-Central Government Standing Counsel submitted that inspite of the notice served on the appellant, the appellant did not file a counter for the opposition and therefore, the application itself is “deemed as abandoned by operation of Section 21(2) of the Act”.

18.This Court has carefully considered the submissions made on either side and the materials available on record.

19.The crucial issue that arises for consideration in the present case is as to whether the 1<sup>st</sup> respondent was right in unilaterally cancelling the Trademark Certificate that was already issued in favour of the appellant and thereafter advertising the application in the Trademark Journal and calling for opposition and ultimately, closing the application as abandoned.



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20.The 2<sup>nd</sup> respondent came into the picture only after the advertisement was published in the Trademark Journal in the year 2018 and the 2<sup>nd</sup> respondent submitted the opposition on 09.02.2018. There is no doubt that the opposition was infact submitted for application Reference No.891453.

21.The need for the 2<sup>nd</sup> respondent to submit the opposition arose only after the application was advertised in the Trademark Journal by the 1<sup>st</sup> respondent. The question that begs for an answer is as to whether after the Trademark Certificate was issued to the appellant, it can be unilaterally cancelled and the application can be restored and can be published in the Trademark Journal which resulted in the filing of the opposition.

22.At this juncture, the order passed by the Delhi High Court in a writ petition filed challenging the public notices dated 06.2.2023 and 27.3.2023,

assumes a lot of significance. The Trademark registration was granted in



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favour of the appellant on 15.07.2005 *vide* Certificate No.400179, which was renewed from time to time. After nearly 18 years, the public notice dated 06.02.2023, came to be issued wherein a list of Trademark applications were provided and the application of the appellant also formed part of it and only at that point of time, the appellant came to know that the Registration Certificate dated 15.07.2005 has been unilaterally cancelled by the 1<sup>st</sup> respondent.

23.Before the Delhi High Court, the Controller General of Patents, Designs and Trademarks took a specific stand that they are withdrawing the public notices dated 06.02.2023 and 27.03.2023 within 10 days. This was recorded and the writ petition was closed. In such an event, no consequence can follow and the matter must have ended there. Curiously, the matter was kept alive and the impugned order dated 09.05.2025, came to be passed to the effect that the appellant has abandoned the application.

24.The impugned order is illegal and unsustainable for more than one reason. The first reason is that the application submitted by the appellant



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was already acted upon and the Registration Certificate No.400179 was issued to the appellant on 15.07.2005. It was also renewed from time to time. If this certificate has to be cancelled for any reason, the appellant ought to have been put on notice and an opportunity must have been given to the appellant, failing which, such cancellation will be construed as a nullity in the eye of law. The second reason is that once a Registration Certificate is given and if anyone is aggrieved, only a rectification can be filed. Whereas the 1<sup>st</sup> respondent has proceeded to cancel the certificate unilaterally and restored the application and entertained opposition. Such a procedure is nowhere contemplated under the Act and Rules.

25.The third reason is that the 1<sup>st</sup> respondent ought not to have proceeded further to pass the impugned order to the effect that the appellant has abandoned the application after having taken a stand that the public notices dated 06.02.2023 and 27.03.2023 are going to be withdrawn within 10 days before the Delhi High Court. If those public notices are withdrawn, there is no question of entertaining an opposition and calling upon the appellant to file this counter.



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26.In the considered view of this Court, the entire procedure followed by the 1<sup>st</sup> respondent smacks with arbitrariness and it is in utter violation of principles of natural justice. In view of the same, the impugned order of the 1<sup>st</sup> respondent dated 09.05.2025, is set aside and there shall be a direction to the 1<sup>st</sup> respondent to reinstate the registration granted to the appellant under Certificate No.400179 dated 15.07.2005, within a period of four weeks from the date of receipt of copy of the order.

27.In the result, this appeal stands allowed in the above terms. No costs.

**27.01.2026**

Index : Yes (or) No  
Neutral Citation : Yes (or) No  
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The Registrar of Trade Marks  
Office of the Trade Mark Registry  
IP Office Building, G.S.T.Road  
Guindy, Chennai 600 032.



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**N.ANAND VENKATESH, J**

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**P.D.JUDGMENT in**  
**CMA (TM) No.16 of 2025**

**27.01.2026**