

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22-06-2026

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DATE OF DECISION : 30-07-2026

CORAM

**THE HONOURABLE MR JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN
THILAKAVADI**

**LPA No.18 of 2026
AND
CMP No.12387 of 2026**

V-Guard Industries Limited
Rep. by its Authorized Signatory, Ms.Jasleen Kaur
42/962, Vennala High School Road, Vennala,
Kochi, Kerala-682 028

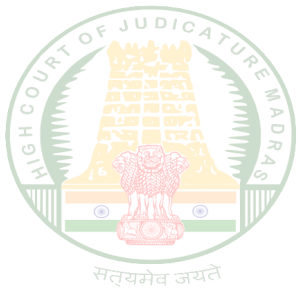
Appellant

Vs

1. M/s.Kangaro Industries
B-XXX-6754, Focal Point
Ludhiana 141 010, Punjab
2. The Registrar of Trade Marks
Trade Marks Registry, IPR Building
Industrial Estate
SIDCO RMT Godown Road
Near Eagle Flask Factory, GST Road
Guindy, Chennai 600 032

Respondent

Memorandum of Grounds of Letters Patent Appeal under Clause 15 of the Letters Patent read with Section 13(1) of the Commercial Courts Act, 2015 and Order XXXVI, Rule 9 of the Madras High Court Original Side Rules against the judgment dated 21.08.2025 passed in (T)CMA(TM).No.193 of 2023 on the file of this Hon'ble Court.



For Appellant: Mr.M.S.Bharath

For Respondents: Mr.Rajesh Ramanathan for R1

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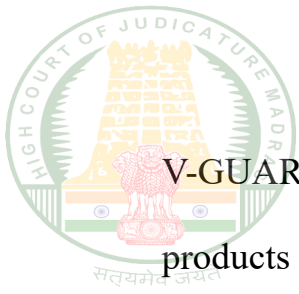
JUDGMENT

P.Velmurugan J.

This appeal is directed against the impugned judgment passed by the learned single Judge in (T)CMA(TM)No.193 of 2023 dated 21.08.2025.

2. The factual matrix leading to the filing of this appeal is as follows:-

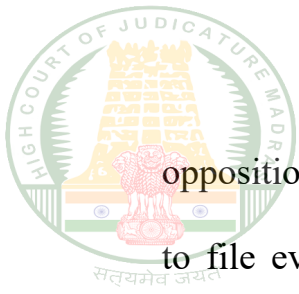
(a) The appellant is a public limited company established in the business scenario of the country with a wide spectrum of products viz., electric wirings and cables, UPS, invertors, chokes, electric and electronic voltage stabilizers, wires, cables, mixer grinders and other electrical apparatuses, lighting systems, water heaters, water pumps, motor starters, solar water heaters, ceiling fans, machines, machine tools, motors, engines, electrical, instruments for conducting switching, transforming, accumulating, regulating or controlling electricity, electronic home appliances and electro mechanical markets and has grown to become one of the trusted brands in India. The appellant is one of the pioneers and leading manufacturer and trader in the fields of UPS, invertors, voltage stabilizers, wires, cables, water heaters, pumps, kitchen and home appliances. The mark V-GUARD with the device of a Kangaroo was first adopted by Mr.Kochouseph Chittilappilly in 1977 in respect of voltage stabilizers. The said mark was adopted to indicate the utmost care and protection given by the



V-GUARD branded voltage stabilizers to the various electrical and electronics products akin a Kangaroo protecting its joey. The mark V-GUARD with the device of Kangaroo has obtained multiple registrations under various classes.

The trademarks V-GUARD are a highly distinctive mark not only on account of its inherent distinctiveness and arbitrary nature, but also equally on account of its acquired strength due to extensive use. Further, the goods and services under the trademarks V-GUARD have been widely promoted and advertised by which the consumers have come about to instantly recognise V-GUARD as the trademarks of the appellant. On account of extensive use and promotional campaigns, it has acquired an enviable reputation in the market irrespective of the products marketed by it. The said trademarks have been extensively promoted and in view of the prolonged usage backed up by extensive advertisement, supply of quality goods, after sales services, the marks V-GUARD gained enviable goodwill and reputation.

(b) In this backdrop, on 09.05.2016, the appellant applied for registration of a label mark featuring 'KANGARO' under Application No.3254001 in class 16. The first respondent opposed the application on 06.01.2017 after it was advertised in Trade Mark Journal No.1767. Subsequently, the appellant filed a counter statement on 19.05.2017 and the same was received by the first respondent on 05.08.2017. The first respondent, under the 2017 Rules, did not have any provision to seek extension of time to file evidence in support of



opposition. However, the first respondent sought a one-month extension of time to file evidence in support of opposition on Form TM-M on 23.09.2017 and filed evidence in support on 18.10.2017. The first respondent neither on the request for extension filed under TM-M nor on the covering letter relied on the contents of the notice of opposition as mandatorily contemplated in Rule 45(1). Therefore, the first respondent had neither filed evidence nor relied on the contents of opposition leading to the deemed abandonment as contemplated under Rule 45(2). The appellant, with abundant caution to ensure there is no deemed abandonment of its application, filed its evidence in support of its application on 21.12.2017, without having to then object to the first respondent not having filed its evidence within the period prescribed in 2017 Rules. The first respondent again sought an extension on 19.01.2018 before filing reply evidence on 03.02.2018. The Registrar of Trade Marks issued a notice under Rule 45(1) on 01.03.2018 regarding the delay and by order dated 08.05.2018, rejected the extension request and held that the opposition stood abandoned under Rule 45(2).

(c) The first respondent filed an appeal under Section 91 of the Trade Marks Act, 1999 before the Intellectual Property Appellate Board (IPAB) on 27.07.2018 against the order dated 08.05.2018 passed by the Assistant Registrar of Trade Marks, Chennai in Opposition Proceeding No.MAS-874593 to Trademark Application No.3254001 in Class 16 filed by the appellant. By the

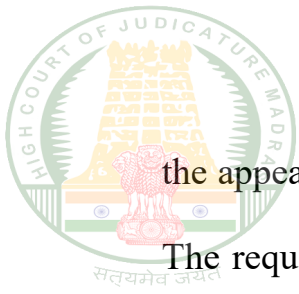


said order, the Assistant Registrar correctly interpreting 2017 Rules, had not only refused the request of the first respondent for extension of one month's time, which had been filed through Form TM-M dated 21.09.2017, but also concluded the opposition proceeding as deemed to be abandoned in terms of Rule 45(2) of the 2017 Rules.

(d) Pursuant to abolishment of the IPAB, the appeal filed by the first respondent was listed for admission on 12.09.2023 before the Madras High Court Intellectual Property Division. Subsequently, after hearing both sides, by judgment dated 21.08.2025, the learned Judge, after setting aside the order dated 08.05.2018 passed by the Assistant Registrar of Trademarks, while recognising that registration had already been granted in favour of the appellant and that rights as a registered proprietor had accrued, has remanded the matter for fresh consideration by directing that the registration will be subject to the outcome of the remanded opposition proceedings. Aggrieved thereby, the present appeal has been filed.

3. The learned counsel appearing for the appellant raised the following grounds:-

(i) No appeal lies against an order rejecting an application for extension of time under Section 131 of the Trade Marks Act, 1999 read with Rule 109 of the Trade Mark Rules, 2017. However, the learned Judge erred in holding that



the appeal under Section 91 was maintainable against the order of the Registrar.

The request for extension of time was admittedly made under Section 131 and the first respondent clearly knew that there is no provision to seek such an extension under Rule 45 read with Section 21 of the Trade Marks Act. The learned Judge correctly observed that Rule 45(1) of the 2017 Rules does not provide for an extension of time, unlike Rule 50 of the 2002 Rules, which did. However, by still holding that an appeal was maintainable, the learned Judge contradicted this correct finding and improperly expanded the scope of Section 91, contrary to the legislative intent.

(ii) The learned Judge erred in law by wrongly concluding that with regard to consequence for filing evidence, there is neither express prescription by statute nor even a reference to prescription by the rules or by any other means, by ignoring and overlooking the reference to the terms "in the prescribed manner" and "within the prescribed time" within Section 21(4), which obviously refers to Rule 45 of 2017 Rules r/w Section 157 of the Act.

(iii) The learned Judge erred in law by holding that Rule 109(1) of the 2017 Rules goes beyond Section 131 of the Act, without there being a prayer or a specific challenge to the said Rule 109(1) to be unconstitutional or that the same was going beyond Section 131, by ignoring and overlooking the numerous interpretation given by the Hon'ble Apex Court that when the rules are validly framed, they should be treated as a part of the Act.



(iv) The learned Judge erred in law by not appreciating or rendering a finding on the fact that if the extension sought on Form TM-M by the first respondent was indeed under Rule 109 r/w Section 131 and not under Rule 45, then the order of the Assistant Registrar rejecting such extension was not appealable under sub-rule (2) of Rule 109, which would result in the evidence not being filed by the first respondent within the prescribed time under Rule 45 or that the evidence filed by the first respondent was beyond the time prescribed under Rule 45, resulting in the abandonment of the opposition.

(v) The learned Judge has incorrectly held that the filing of Form TM-M within the two-month period amounted to compliance with Rule 45(1) and that the legal fiction of deemed abandonment did not apply. This finding completely overlooks the mandatory nature of the time limits prescribed under Rule 45 and the deliberate exclusion of the Registrar's discretion under the 2017 Rules.

(vi) The learned Judge erred in law and on facts in holding that the mere filing of a request for extension of time through Form TM-M within the two-month period prescribed under Rule 45(1) of the 2017 Rules amounted to 'action' within the meaning of Rule 45(1), thereby negating the operation of Rule 45(2). The provision contemplates only the filing of evidence or an express intimation that no evidence will be filed. A request for extension does not constitute compliance with Rule 45(1) and cannot avert the statutory consequence of deemed abandonment under Rule 45(2).



(vii) The learned Judge erred in not appreciating the admitted fact that the first respondent had neither on the request nor on the covering letter relied on the contents of the notice of opposition as mandatorily contemplated in Rule 45(1). Therefore, the first respondent had neither filed evidence nor relied on the contents of opposition leading to the deemed abandonment as contemplated under Rule 45(2).

(viii) The learned Judge failed to appreciate that while the notice of opposition was filed under the Trade Marks Rules, 2002, the stage for filing evidence in support of opposition arose only after the coming into force of the 2017 Rules. Under the 2017 Rules, Rule 45(1) expressly mandates that evidence must be filed within two months from the service of the counter statement, and Rule 45(2) prescribes the consequence of deemed abandonment in case of default. Unlike Rule 50 of the 2002 Trade Marks Rules, the 2017 Trade Marks Rules consciously omitted the discretionary power of the Registrar to grant a further one-month extension. The transition thus makes it clear that no extension of time could be sought once the 2017 Rules had come into force, as the time limit was expressly provided by the Trade Marks Rules framed under the Act. The learned Judge, in holding otherwise, has defeated the legislative intent behind the amendment and reintroduced a discretion which the Rule-making authority had deliberately taken away.

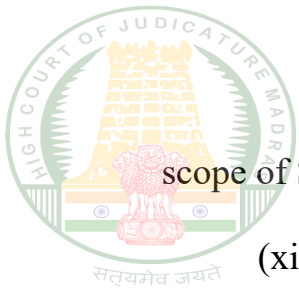
(ix) The learned Judge erred in disregarding the well-reasoned finding of



the Division Bench of the Delhi High Court in SAP SE v Swiss Auto Products (2024 SCC OnLine Del 1750), especially, while agreeing to its findings in

Paragraph 67 to 70 of the said ruling, within paragraph no.30 of the impugned judgement, but went on to not agree with the conclusions in paragraphs 72 to 75 of the same Delhi High Court Division Bench ruling within paragraph 30 of the impugned judgment, which unequivocally held that under the 2017 Rules, the period of two months stipulated in Rule 45(1) is mandatory and represents the maximum period available to file evidence in support of opposition, with no further extension permissible. The departure from this authoritative ruling renders the impugned judgment unsustainable.

(x) The learned Judge failed to appreciate that the power under Section 131 of the Trade Marks Act, 1999 read with Rule 109 of the 2017 Rules cannot be invoked where the Act or the Rules expressly provide for a time limit and its consequence. Rule 45(1) and 45(2) expressly provide for a time limit. Hence, recourse to Section 131 for further extension of time is impermissible. In any event, even if Section 131 were assumed to apply, it does not confer a statutory right of extension of time on the party. The provision is couched in discretionary terms, leaving the matter to the satisfaction of the Registrar, and further bars any appeal under Section 131(2). The impugned judgment, by treating the filing of TM-M as sufficient compliance and by overriding the Registrar's decision, defeats both the express exclusion under Rule 109 and the limited, conditional



scope of Section 131.

(xi) The learned Judge erred in setting aside the order of the Assistant Registrar dated 08.05.2018 and remanding the opposition for fresh consideration, despite recognising that the registration had already been granted to the appellant herein and that rights of a registered proprietor had accrued since 2018. Once registration has been granted, the appropriate remedy available to an aggrieved opponent is by way of rectification under Sections 47 or 57 of the Trade Marks Act, and not by revival of abandoned opposition proceedings.

(xii) The impugned judgment is contradictory because, although the learned Judge set aside the Assistant Registrar's order citing an alleged wrong application of Rule 45, the Judge still refused to cancel the appellant's registration and instead directed that it should "abide the outcome" of the remanded proceedings. This approach is not supported by the Trade Marks Act, 1999 and goes against the statutory scheme, which treats a registration as valid unless it is specifically challenged through a rectification proceeding.

(xiii) The impugned judgment has caused grave prejudice to the appellant by unsettling a registration that has been validly granted and acted upon for more than seven years, during which period the appellant has acquired statutory rights as a registered proprietor and has instituted enforcement actions based on such registration. The interference by the learned Judge disrupts commercial



certainly and undermines the sanctity of the Register.

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4. In support of the above, the learned counsel has relied upon the following judgments:-

(i) Division Bench judgment of Delhi High Court in SAP SE v. Swiss Auto Products and another, 2024 SCC OnLine Del 1750

(ii) Judgment of learned single Judge of Delhi High Court in Sun Pharma Industries Ltd. v. Dabur India Ltd and another, 2024 DHC 946

(iii) Judgment of the learned single Judge of this Court in CMA(TM)No.22 of 2025 dated 10.02.2026 (ACE Foods Private Limited v. The Registrar of Trade Marks & another)

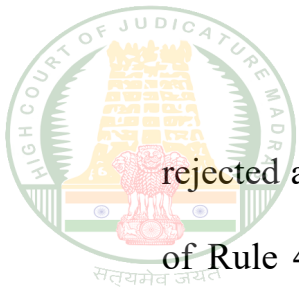
(iv) Order of the learned single Judge of this Court in Rolls-Royce PLC, represented by its Constituted Attorney v. Union of India and others, 2025 SCC OnLine Mad 11116

(v) Judgment of the learned single Judge of Bombay High Court in Commercial Miscellaneous Petition No.23 of 2026 dated 17.06.2026 (Black Diamond Motors Pvt.Ltd. v. Registrar of Trade Marks, Mumbai & another)

(vi) Order of the learned single Judge of this Court in W.P.No.5703 of 2016 dated 10.10.2025 (Yokogawa Electric Corporation v. Union of India & others)

(vii) Judgment of the learned single Judge of Delhi High Court in C.A. (Comm.IPD-TM) No.76 of 2022 dated 31.07.2025 [Tablets (India) Limited v. Spey Medicals Private Limited & another]

5. On the other hand, the learned counsel appearing for the first respondent, reiterating the contentions made before the learned single Judge that the application for extension to file evidence in support of opposition cannot be

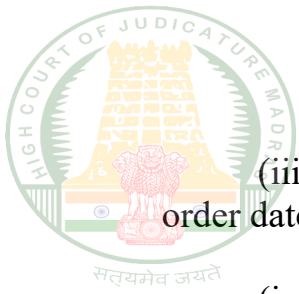


rejected and the opposition cannot be deemed to have been abandoned in terms of Rule 45(2) of the 2017 Rules, filed the compendium of judgments for the proposition on substantive law versus procedural law, as follows:-

- (i) Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774
- (ii) Kailash v. Nanhku & others, (2005) 4 SCC 480
- (iii) Additional District Magistrate v. Siri Ram, (2000) 5 SCC 451
- (iv) Jagatjit Industries Limited v. IPAB & others, (2016) 4 SCC 381
- (v) Ramnath Exports Private Limited v. Vinita Mehta & another, (2022) 7 SCC 678
- (vi) Kerala State Electricity Board & others v. Thomas Joseph alias Thomas & another, (2023) 11 SCC 700

The learned counsel also filed the compendium of judgments on the interpretation of Rules 45 & 46 of the Trade Mark Rules, 2017 holding that the rules are only directory in nature; that though procedural provisions are required to be accorded their due deference, they cannot be interpreted so rigidly as to result in evisceration of substantive rights vested in the citizens and that the right to oppose registration of a trade mark is just as sacrosanct as the right to seek registration; that the purity of the register is to be maintained keeping the public interest in view and so on, as follows:-

- (i) Khoday Distilleries Limited v. The Scotch Whisky Association & others (2008) 10 SCC 723
- (ii) Hastimal Jain v. Registrar of Trade Marks & another, 2000 (52) DRJ (FB) 196



(iii) K.Dalpat Singh v. IPAB & others, MANU/TN/4407/2019 along with order dated 07.01.2021 in SLP (C) No.429 of 2001

(iv) Wyeth Holdings Corporation. v. Controller General of Patents, Designs and Trade Marks, 2006 SCC OnLine Guj 620

(v) Bausch & Lomb Incorporated v. Union of India & others, 2016 SCC OnLine Guj 2980

(vi) V-Guard Industries v. Registrar of Trade Marks & another, 2023 SCC OnLine Del 59

(vii) Judgment of the learned single Judge of this Court in CMA(TM)No.22 of 2025 dated 10.02.2026 (ACE Foods Private Limited v. The Registrar of Trade Marks & another)

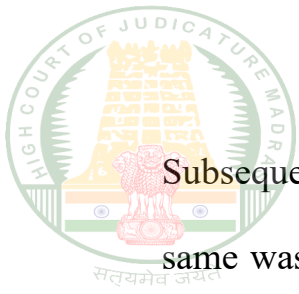
(viii) Judgment of the learned single Judge of Bombay High Court in Commercial Miscellaneous Petition No.23 of 2026 dated 17.06.2026 (Black Diamond Motors Pvt.Ltd. v. Registrar of Trade Marks, Mumbai & another)

(ix) Sahil Kohli v. Registrar of Trade Marks & others, 2019 (77) PTC 352 (IPAB)

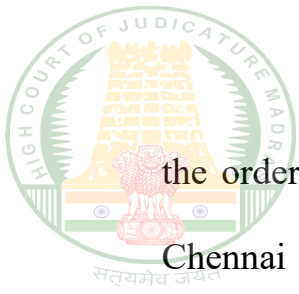
(x) Adhya Kumar v. Mulligan Concept Teachers Association & another, 2019 SCC OnLine IPAB 7

6. We have given our anxious consideration to the rival contentions and perused the materials available on record.

7. The specific case of the appellant is that the appellant applied for registration of a label mark featuring 'KANGARO' under Application No.3254001 in class 16. The first respondent opposed the application on 06.01.2017 after it was advertised in Trade Mark Journal No.1767.

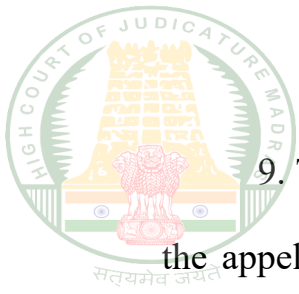


Subsequently, the appellant filed a counter statement on 19.05.2017 and the same was received by the first respondent on 05.08.2017. The first respondent, under the Trade Marks Rules 2017, did not have any provision to seek extension of time to file evidence in support of opposition. However, the first respondent sought a one-month extension of time to file evidence in support of opposition on Form TM-M on 23.09.2017 and filed the evidence in support on 18.10.2017. The first respondent neither on the request for extension filed under TM-M nor on the covering letter relied on the contents of the notice of opposition as mandatorily contemplated in Rule 45(1). Therefore, the first respondent had neither filed evidence nor relied on the contents of opposition leading to the deemed abandonment as contemplated under Rule 45(2). The appellant, with abundant caution to ensure there is no deemed abandonment of its application, filed its evidence in support of its application on 21.12.2017, without having to then object to the first respondent not having filed its evidence within the period prescribed in 2017 Rules. The first respondent again sought an extension on 19.01.2018 before filing reply evidence on 03.02.2018. The Registrar of Trade Marks issued a notice under Rule 45(1) on 01.03.2018 regarding the delay and by order dated 08.05.2018, rejected the extension request and held that the opposition stood abandoned under Rule 45(2). Challenging the same, the first respondent filed an appeal under Section 91 of the Trade Marks Act, 1999 before the Intellectual Property Appellate Board (IPAB) on 27.07.2018 against



the order dated 08.05.2018 passed by the Assistant Registrar of Trade Marks, Chennai in the opposition proceedings. As per Section 91, the appeal is not maintainable and the first respondent cannot challenge the order of rejection of the extension request. However, after the abolishment of the IPAB, the appeal filed by the first respondent was listed for admission on 12.09.2023 before the Intellectual Property Division of this Court. The learned single Judge, after setting aside the order dated 08.05.2018 passed by the Assistant Registrar of Trade Marks, while recognising that registration had already been granted in favour of the appellant and that rights as a registered proprietor had accrued, has remanded the matter for fresh consideration by directing that the registration will be subject to the outcome of the remanded opposition proceedings. Aggrieved thereby, the present appeal is filed.

8. The case of the first respondent is that the present letters patent appeal itself is not maintainable, as the learned single Judge, while setting aside the order passed by the Assistant Registrar of Trade Marks dated 08.05.2018, has only remanded the matter to the Registrar for giving opportunity and to pass orders on merits. As per Section 13(2) read with Section 21 of the Commercial Courts Act, the present intra-Court appeal is barred and therefore the appeal has to be rejected in limine.

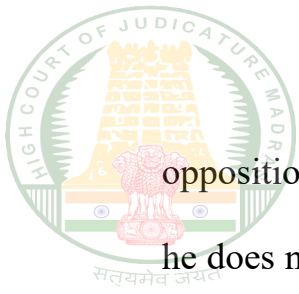


9. The learned counsel for the appellant vehemently contended that when the appellant applied for registration of a label mark featuring 'KANGARO', the first respondent opposed the application. The appellant also filed the counter statement and the same was received by the first respondent. The first respondent ought to have filed the evidence in support of opposition within two months from the date of receipt of counter statement. Since the first respondent has not complied with the mandatory provisions of Rule 45(1) of the Trade Marks Rules, 2017, the opposition of the first respondent got abandoned under Rule 45(2) and no extension of time can be granted. When the opposition of the first respondent got abandoned for non-compliance of the mandatory provisions under Rule 45, the first respondent cannot subsequently invoke the provisions of Section 131 of the Trade Marks Act seeking an extension. When the first respondent filed the TM-M for extension of time beyond the period stipulated under Rule 45(1), the Assistant Registrar rightly refused to grant extension of time and therefore the appeal under Section 91 of the Trade Marks Act, 1999 is not at all maintainable against the said order. However, the learned single Judge set aside the order passed by the Assistant Registrar refusing to grant extension and remanded the matter, which is against the provisions of law and the legislative intent. When it is the mandate of the parties to strictly adhere to the amended 2017 Rules, no extension of time is permitted and therefore the order passed by the learned single Judge is without jurisdiction.



10. Though the learned counsel for the first respondent vehemently contended that the present letters patent appeal itself is not maintainable, which is against the provisions of Section 13(2) of the Commercial Courts Act, for which the learned counsel for appellant cited the judgment of a Division Bench of the Delhi High Court in the case of *VR Holdings v. Hero Invest Corporation Limited and another*, 2023 SCC OnLine Del 4673 and submitted that following the said judgment, this Court has also entertained similar appeals. Therefore, when the matter came up for admission before us, considering the above Division Bench judgment and also the earlier orders passed by this Court, overruling the objection raised by the learned counsel for the first respondent on maintainability, we have entertained the present letters patent appeal and heard the learned counsel appearing for the parties at length.

11. Admittedly, in this case, when the appellant applied for registration of a label mark featuring 'KANGARO', the first respondent opposed the application after it was advertised in Trade Mark Journal No.1767. Subsequently, the appellant filed a counter statement on 19.05.2017 and the same was received by the first respondent on 05.08.2017. As per Rule 45(1) of the Trade Marks Rules, 2017, the first respondent, within two months from service of a copy of the counterstatement, shall either leave with the Registrar such evidence by way of affidavit as he may desire to adduce in support of his



opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall also deliver to the applicant copies of any evidence including exhibits, if any, that he leaves with the Registrar under this sub-rule and intimate the Registrar in writing of such delivery. Whereas, admittedly, in this case, the first respondent had neither filed evidence nor relied on the contents of opposition leading to the deemed abandonment as contemplated under Rule 45(2). Thereafter, the appellant with abundant caution to ensure there is no deemed abandonment of its application, filed its evidence in support of its application on 21.12.2017, without having to then object to the first respondent not having filed its evidence within the prescribed period under Rule 45(1). The first respondent again sought an extension on 19.01.2018 before filing reply evidence on 03.02.2018. The Registrar issued a notice under Rule 45(1) on 01.03.2018 regarding the delay and by order dated 08.05.2018, rejected the extension.

12. Now the point for determination in this case is whether the Rule 45 of the Trade Marks Rules, 2017 is mandatory or directory? If it is considered as mandatory, the Assistant Registrar has no authority to extend the time and the order passed by the Assistant Registrar dated 08.05.2018 for rejecting the request made by the first respondent cannot be interfered with. If it is



considered as directory, it is the discretionary power of the Assistant Registrar then subject to satisfaction, he can extend the time.

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13. Though the learned counsel for the first respondent contended that Section 91 of the Trade Marks Act, 1999 gave power to file appeal challenging the order passed under this Act, for which the learned counsel for appellant replied that prior to the amended 2017 Rules, the position was different. Now under the amended Trade Marks Rules, 2017, Rule 45 is very clear and it mandates the parties to adhere to the rules, failing which would lead to abandonment and therefore the power under Section 131 cannot be exercised and even Rule 109 also uses the language that only if the Registrar is satisfied, he may extend the time. Though the learned single Judge, exercising the power under the Intellectual Property Division, set aside the order passed by the Assistant Registrar, the main contention of the learned counsel for the appellant is that no appeal lies against the order rejecting an application for extension of time under Section 131 of the Trade Marks Act, 1999 read with Rule 109 of the Trade Marks Rules, 2017 or even under Rule 45 of the Trade Marks Rules, 2017 read with Section 21 of the Trade Marks Act, 1999. In fact, Rule 45(1) does not provide for an extension of time, unlike Rule 50 of the 2002 Rules. In this context, Rule 45 of the Trade Marks Rules, 2017 is extracted hereunder:-

“45. Evidence in support of opposition.--(1) Within two

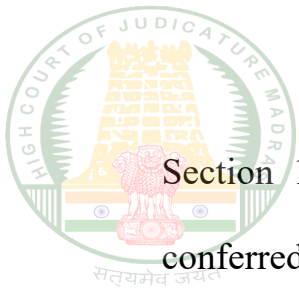


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months from service of a copy of the counterstatement, the opponent **shall** either leave with the Registrar, such evidence by way of affidavit as he may desire to adduce in support of his opposition or **shall** intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He **shall** deliver to the applicant copies of any evidence including exhibits, if any, that he leaves with the Registrar under this sub-rule and intimate the Registrar in writing of such delivery.

(2) If an opponent takes no action under sub-rule (1) within the time mentioned therein, he **shall** be deemed to have abandoned his opposition.” **(emphasis supplied)**

14. A plain reading of sub-rule (1) of Rule 45 would show that in three places the language used is only ‘**shall**’ and further in sub-rule (2) of Rule 45, the language used is ‘**shall be deemed to have abandoned his opposition**’. Therefore, the intention of the Legislature is that the time prescribed under Rule 45 shall be strictly adhered to and unlike Rule 50 of the 2002 Rules, extension of time is not provided under the 2017 Rules. When the Legislature, while putting in place the 2017 Rules, intended to employ the language ‘**shall**’ in sub-rule (1) and also in sub-rule (2) leading to the abandonment of opposition for non-compliance of the provisions of sub-rule (1), under Rule 45, their compliance should be treated as mandatory and not as directory. Rather in



Section 131, the language used is ‘**may**’, thereby a discretionary power is conferred on the Registrar to extend the time if he is satisfied with the sufficient cause. Similarly, Rule 109 also employed the language ‘**may**’ and conferred discretionary power on the Registrar for extending the time, if the application is made under Section 131 (not being a time expressly provided in the Act or prescribed by rule 85 or by sub-rule (3) of rule 86 or a time for the extension of which provision is made in the rules), but not under Rule 45 prescribing the time limit for compliance and in default thereof, the consequences thereto in express terms. In this case, when the first respondent had neither filed evidence nor relied on the contents of opposition within the period prescribed under Rule 45(1) and only sought an extension under Section 131 of the Act read with Rule 109 of the Rules, the Assistant Registrar has exercised his discretionary power and rejected the extension request and treated the opposition as deemed to have been abandoned under Rule 45(2) of the Trade Marks Rules, 2017. While exercising discretionary power, there is no arbitrariness in rejecting the request made by the first respondent. Further the first respondent has got remedy under Section 47 or Section 57 of the Trade Marks Act. However, the learned single Judge has failed to consider the mandatory provisions of Rule 45 of the Trade Marks Rules, 2017 and proceeded to set aside the order dated 08.05.2018 passed by the Assistant Registrar, which warrants interference. Accordingly, the order passed by the learned single Judge is set aside and the letters patent appeal



stands allowed. Consequently, the connected CMP is closed. No order as to costs.

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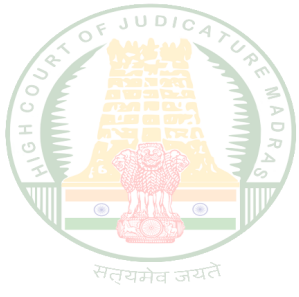
(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)
30-07-2026

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No

SS

To

1. The Registrar of Trade Marks
Trade Marks Registry, IPR Building
Industrial Estate
SIDCO RMT Godown Road
Near Eagle Flask Factory, GST Road
Guindy, Chennai 600 032



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LPA No. 18 of 2026



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN
THILAKAVADI J.**

SS

**Judgment in
LPA No.18 of 2026**

30-07-2026