



Order QR

A. No. 770 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 01.10.2026

PRONOUNCED ON : 09.10.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A No. 770 of 2023

in

C.S. (Comm.Div.) No. 161 of 2022

Kaira District Co-operative,
Milk Producers Union Limited,
Amul Dairy, Road, Anand-388 001.

..Applicant(s)

Vs

Asian Beverage Private Limited.
15/430, Dr.Alagappa Road, Purasawakkam,
Chennai 600 084., Rep.by its Authorised Signatory
C.Vijayakumar.

..Respondent(s)

PRAYER: To issue Summary Judgment against the Respondent/Plaintiff and dismiss the present suit C.S.(Comm.Div) No.161 of 2022 with exemplary costs.

For Applicant(s):

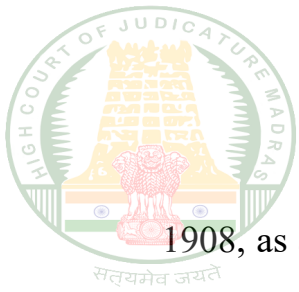
Mr. Arul Gnana Prakash
for M/s.BFS Legal

For Respondent(s):

Mr.R.Sathish Kumar

ORDER

The applicant/defendant, Kaira District Cooperative Milk Producers Union Ltd., seeks summary judgment under Order XIII-A of the Code of Civil Procedure,



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1908, as applicable to commercial disputes, dismissing the suit instituted by the respondent/plaintiff, Asian Beverage Pvt. Ltd., alleging infringement of its registered trademark “TRUE VALLEY” and passing off by reason of the applicant/defendant's use of the mark “AMUL TRU” in respect of identical or similar products.

2. The plaintiff claims adoption and continuous use of “TRUE VALLEY” since 26.01.2012 and registration under No.2276842 in Class 32, and alleges that the defendant's use of “AMUL TRU” for identical goods is deceptively similar and likely to cause confusion. The defendant denies infringement and passing off. It states that it is a district-level co-operative society, originally registered under the Bombay Co-operative Societies Act, 1925, and organized in the year 1946, whereas Gujarat Co-operative Milk Marketing Federation Limited (GCMMF) is also a co-operative society registered under the Gujarat Co-operative Societies Act, 1961 and functions as a State-level federation for, inter alia, marketing the products of its members, including the defendant. According to the defendant, GCMMF markets its products bearing AMUL and its variants, including AMUL TRU, while the intellectual property in the mark AMUL TRU vests with the defendant. The defendant claims adoption and use of “AMUL TRU” since 02.03.2019 and registration of its marks. It further



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contends that the plaintiff's registration is confined to a composite label and does not confer any exclusive right over the word "TRUE".

3. The applicant/defendant contends that the suit is not maintainable for want of the notice prescribed by Section 167 of the Gujarat Co-operative Societies Act, 1961, and for non-joinder of Gujarat Co-operative Milk Marketing Federation Ltd. (GCMMF) and the plaintiff's predecessors in title. It further submits that the plaintiff's registration is for a composite label and does not confer an exclusive right over the word "TRUE"; that "AMUL TRU" is independently registered; and that the marks and packaging are dissimilar. Relying also on the prominence of "AMUL", the alleged absence of established goodwill and the plaintiff's conduct and delay, the applicant submits that the plaintiff has no real prospect of succeeding.

4. The respondent opposes the application. It claims use of "TRUE VALLEY" since 2012, preceding the defendant's adoption of "AMUL TRU" in 2019, and relies on the alleged phonetic and visual similarity between "TRUE" and "TRU" in relation to identical goods. It disputes the applicant's interpretation of the registration limitations and denies suppression and unjustified delay. It states that it opposed the defendant's applications in March



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2021, sought rectification in March 2022 and instituted the suit in August 2022.

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It contends that Section 167 is inapplicable and that neither GCMMF nor the former proprietors are necessary parties. According to the respondent, the disputed questions require a trial.

5. Learned counsel for the defendant submitted that the plaintiff has no real prospect of succeeding in the suit and that there is no compelling reason to proceed to trial under Order XIII-A CPC, relying upon **Syrma Technology Pvt. Ltd. v. Powerwave Technologies Sweden AB, 2020 (4) CTC 513 (Mad) (DB) and Godaddy.com LLC v. Puravankara Projects Ltd., 2022 (91) PTC 440 (Mad)**. It was contended that the Court can examine the documents on record without confining itself to the plaint and that the questions concerning the manner in which the rival marks are used and perceived and the conduct of the parties do not require oral evidence, as the former can be assessed by the Court and the latter is evident from the existing records.

6. Learned counsel further submitted that the plaintiff's registration No.2276842 relates only to a composite label and does not confer any exclusive right over the word "TRUE". Relying upon **Pernod Ricard India (P) Ltd. v. Karanveer Singh Chhabra, 2025 SCC OnLine SC 1701**, it was contended



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that the rival marks must be compared as a whole. Reference was also made to

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Sections 28(3) and 30(2)(e) of the Trade Marks Act, 1999 and **S. Syed Mohideen v. P. Sulochana Bai, (2016) 2 SCC 683**, in support of the defendant's rights arising from its registrations. It was further contended that the plaintiff had itself distinguished the marks “TRUE DROPS” and “TRUE PASSION” before the Trade Marks Registry, that the prominent house mark “AMUL” eliminates any likelihood of confusion, and that the plaintiff's sales figures are doubtful. Objections regarding non-joinder of necessary parties and non-compliance with Section 167 of the Gujarat Co-operative Societies Act, 1961 were also reiterated. Thus, learned counsel submitted that the suit is liable to be dismissed by summary judgment without proceeding to trial.

7. Per contra, learned counsel for the plaintiff submitted that, though trademarks are ordinarily compared as a whole, their dominant and essential features may also be considered. Reliance was placed on **PhonePe Pvt. Ltd. v. Ezy Services, 2021 SCC OnLine Del 2635**. It was further submitted that the plaintiff does not dispute the defendant's rights in the mark “AMUL” independently and that its reputation and turnover are not relevant to the present controversy.



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8. As regards non-joinder and non-issuance of notice under Section 167 of

the Gujarat Co-operative Societies Act, 1961, learned counsel submitted that Gujarat Co-operative Milk Marketing Federation Limited (GCMMF) is not a necessary party to the suit. It was further contended that Section 167 is inapplicable to the present dispute concerning trademark infringement and passing off, and that the Gujarat Co-operative Societies Act, being a State legislation, cannot override or defeat the statutory rights available under the Trade Marks Act, 1999 and the Copyright Act, 1957.

9. Learned counsel further submitted that the defendant's registrations cannot form the basis for summary dismissal, particularly when opposition and rectification proceedings are pending. It was contended that passing off is an independent common law remedy involving proof of goodwill, misrepresentation and damage, which requires evidence. Relying upon ***Hindustan Pencils (P) Ltd. v. India Stationery Products Co., AIR 1990 Del 19***, it was submitted that mere delay, in the absence of acquiescence, cannot defeat the plaintiff's substantive rights, though it may affect the relief of damages. Relying upon ***Syrma Technology v. Powerwave Technologies, 2020 (4) CTC 513 (Mad) (DB)*** and ***Godaddy.com LLC v. Puravankara Projects Ltd., 2022 (91) PTC 440 (Mad)***, learned counsel submitted that the manner in which the



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rival marks are used and perceived, the goodwill and reputation claimed and the conduct of the parties involve genuine triable issues requiring oral evidence.

Therefore, the suit cannot be dismissed by summary judgment under Order XIII-A CPC, and the present application is liable to be dismissed.

10. The points arising for consideration are:

(i) whether the suit is defective for non-joinder of necessary parties;

(ii) whether its institution without notice under Section 167 of the Gujarat Co-operative Societies Act, 1961 renders it not maintainable; and

(iii) whether the applicant is entitled to summary judgment under Order XIII-A. of CPC.

11. Under Order XIII-A Rule 3, summary judgment may be granted only where the plaintiff has no real prospect of succeeding on the claim and there is no other compelling reason why the claim should await disposal after recording oral evidence. Both requirements must be satisfied. The Court must examine the pleadings and documentary material and cannot dispose of a genuinely disputed factual controversy merely because one party asserts that its case is stronger. Conversely, an established legal impediment to the institution of the suit may be decided without oral evidence where its material factual foundation is not in



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dispute.

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12. **Point No.1**: As regards non-joinder, a necessary party is one without whose presence an effective decree cannot be passed. Order I Rule 9 provides that a suit shall not be defeated by non-joinder, subject to the exception concerning a necessary party. The mere involvement of another entity in the commercial dealings does not establish that it is a necessary party.

13. The plaintiff asserts rights acquired by assignment from Fine Agro Products. An assignor does not become a necessary party to every subsequent infringement action brought by the assignee. The validity and scope of the assignment must be proved where disputed, but non-impleadment of the assignor, by itself, does not defeat an action against an alleged infringer. No basis has been shown for holding that an effective decree concerning the defendant's alleged acts cannot be passed in the assignor's absence.

14. The applicant describes GCMMF as the entity marketing the products. That circumstance does not establish that GCMMF is indispensable to the relief sought against the applicant, which is proceeded against as the proprietor of the impugned mark and the entity responsible for the challenged commercial



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activity. A marketer may incur liability for its own infringing acts; it would

therefore be incorrect to hold that GCMMF can incur no liability merely because it is a marketer. Nevertheless, possible liability or its status as a proper party is distinct from being a necessary party. The objection of non-joinder is accordingly rejected. Point No.1 is answered against the applicant/defendant.

15. **Point No.2:** Section 167 of the Gujarat Co-operative Society Act requires a person proposing to sue a society, or its officers, in respect of an act touching the business of the society to give the prescribed written notice to the Registrar and to allow two months to expire before instituting the suit. The notice must state the cause of action, the plaintiff's name, description and residence, and the relief claimed; the plaint must state that such notice has been delivered or left at the Registrar's office. Notice to the society alone is not the compliance contemplated by the provision.

16. The respondent's submission that a State enactment cannot restrict rights conferred by the Trade Marks Act, 1999 or the Copyright Act, 1957 is too broadly stated. Legislative competence and repugnancy are distinct questions. A State enactment is not displaced merely because the cause of action arises under a Central enactment. Nor does the absence of an express notice provision in a



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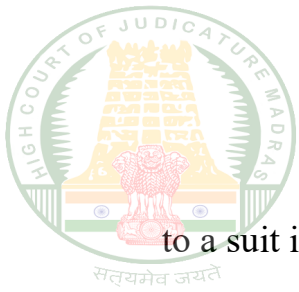
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Central enactment conclusively establish either repugnancy or compatibility.

WEB COPY The Court must examine whether the provisions can operate together and whether there is an actual inconsistency.

17. The notice requirement, when applicable, regulates institution of the suit and does not extinguish the intellectual property right itself. No provision has been identified which expressly dispenses with this requirement in the circumstances of the present case, nor has an unavoidable conflict between the enactments been demonstrated. The respondent's objection based solely on the distinction between State and Central legislation is therefore rejected.

18. A further question is whether the acts complained of touch the business of the applicant society. In **Mohan Meakin Ltd. v. Pravara Sahkari Sakhar Karkhana Ltd., (1987) 89 Bom LR 356**, the **Bombay High Court** applied the comparable Section 164 of the Maharashtra Co-operative Societies Act, 1960 to an infringement and passing-off action concerning goods manufactured and sold as part of the society's authorised business. That decision supports the proposition that describing a claim as an action in tort does not, by itself, take it outside a statutory notice requirement. It is persuasive authority on that question; it does not decide the territorial application of the Gujarat enactment



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to a suit in Chennai.

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19. In **Sterling Centre Premises Owners Co-op. Societies Ltd. v. Nanubhai R. Shah**, (2006) 3 GLR 1853, the Gujarat High Court explained that a plaintiff's status as a third party does not itself dispense with Section 167. Its applicability turns on the subject matter and its connection with the society's business.

20. In *The Purushottam Farms Cooperative Cotton Ginning and Processing Society Ltd. v. Gujarat RayjaKhedut Samaj*, R/Civil Revision Application No.569 of 2024, dated 05.01.2026, the Court, while considering an application for rejection of the plaint under Order VII Rule 11 CPC, recognised that notice under Section 167 is mandatory where the suit concerns an act touching the business of the society. In that case, the dispute arose between the society as lessor and the plaintiff as lessee. In the absence of the society's bye-laws or other relevant material in the plaint and its accompanying documents, it could not be established that letting out premises formed part of the society's business.



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21. The present case stands on a different footing. The respondent/plaintiff

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alleges that the defendant society's use of the mark "AMUL TRU" infringes its trademark "TRUE VALLEY". The dispute concerns the society's manufacture and sale of beverages under the impugned mark in the ordinary course of its business. It therefore touches the business of the society. The defendant society being registered under the Gujarat Co-operative Societies Act, 1961, the requirement of notice under Section 167 is attracted. Although such notice is not compulsory in every suit against a co-operative society, it is mandatory where, as in the present case, the suit concerns an act touching its business.

22. In respect of institution of the suit outside Gujarat. The location of the forum and the applicability of the statutory condition are separate questions. The applicant is a society constituted and registered under the Gujarat enactment, and the impugned activity is attributed to that society in the course of its business. In this setting, the notice condition is invoked as an incident of proceedings against that society; it is not invoked to regulate co-operative societies in Tamil Nadu generally. The choice of a competent forum outside Gujarat does not, by itself, release the plaintiff from a condition otherwise attracted to the institution of its claim against the Gujarat society. This conclusion rests on the connection of the defendant and the challenged business



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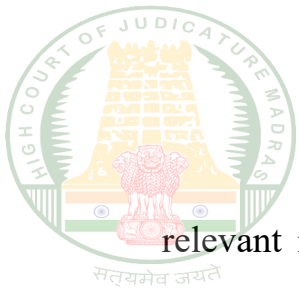
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with the Gujarat enactment, and not on any proposition that a State law operates

throughout India without territorial limitation.

23. In the circumstances stated above, Section 167 of Gujarat Cooperative societies Act 1961 is attracted. The suit was instituted without the prescribed notice to the Registrar and without expiry of the statutory period. The respondent's answer is that the provision is inapplicable, rather than that the statutory requirement was complied with. Mere passage of two months during the pendency of the suit cannot substitute for the pre-institution notice and waiting period required by the statute. Point No.2 is accordingly answered in favour of the applicant/defendant.

24. **Point No.3:** The remaining contentions concerning the composite registration, the scope of protection under Section 17 of the Trade Marks Act, the effect of the defendant's registration, deceptive similarity, prior use, goodwill and delay are not finally determined in this application. A separate registration does not automatically defeat a passing-off claim, which is preserved by Section 27(2) of the Trade Marks Act. Equally, the plaintiff cannot claim an exclusive right over every component of a composite mark merely by relying on registration of the whole. These questions require examination of the



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relevant registrations, their limitations, the parties' use and the evidence. No

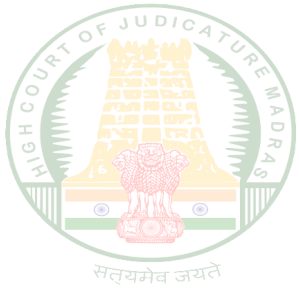
finding on their merits is necessary in view of the threshold bar to institution of this suit.

25. The absence of statutory notice, on the factual and legal basis set out above, renders the suit as instituted not maintainable. Oral evidence concerning deceptive similarity or goodwill cannot cure that defect. Consequently, the plaintiff has no real prospect of succeeding in the present suit as instituted, and there is no compelling reason to await oral evidence for disposal on this limited ground. The requirements of Order XIII-A Rule 3 are satisfied. Point No.3 is answered in favour of the applicant/defendant.

26. In the result, A.No.770 of 2023 is allowed. C.S. (Comm. Div.) No.161 of 2022 is dismissed as not maintainable for non-compliance with Section 167 of the Gujarat Co-operative Societies Act, 1961. This dismissal does not adjudicate the merits of the infringement or passing-off claims. It does not preclude institution of fresh proceedings after compliance with the applicable statutory requirements, subject to limitation and all other objections available in law. Having regard to the nature of the question decided, there shall be no order as to costs.

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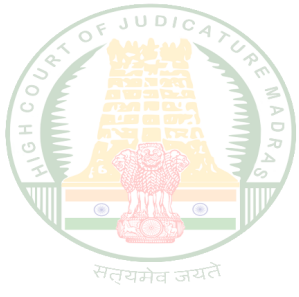


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DR.A.D.MARIA CLETE, J.

GSA

**PRE-DELIVERY ORDER MADE IN
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in
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