IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07-04-2026

DATE OF DECISION : 21-04-2026

CORAM

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

OSA No.263 of 2020

Hatsun Agro Product Ltd.,
Having registered office at
No.1/20-A, Rajiv Gandhi Salai (OMR)
Karapakkam, Chennai-600 097
And also carrying on its business at
Old No.AD-83/New No.AD13
Anna Nagar, Opp. IOB Towers Branch
Chennai-600 040
Represented by its Authorised Signatory

Appellant

Vs

1. M/s.Patanjali Biscuits Pvt. Ltd.,
   Continental Chambers, 5th Floor
   15A, Hemantha Basu Sarani
   Kolkatta-700 001

2. M/s Patanjali Ayurved Ltd.,
   Plot No.209, Bhalawa Village
   Opposite Jaiangir Puri
   G.T.Karnal Road, Delhi-33

Respondents

Memorandum of Grounds of Original Side Appeal filed under Order XXXVI, Rule 1 of Original Side Rules read with Clause 15 of Letters Patent, to

set aside the judgment and decree dated 07.02.2020 passed by the Hon'ble Court in Application No.2920 of 2019 in C.S.No.33 of 2019.

For Appellant: Mr.N.Surya Senthil and
Mr.Shubham M.George
for M/s.Surana and Surana

For Respondents: Mr.P.Giridharan for R1 & R2

JUDGMENT

P.Velmurugan J.

This original side appeal has been directed against the judgment and decree passed by the learned single Judge in Application No.2920 of 2019 in C.S.No.33 of 2019 dated 07.02.2020, in and by which the suit filed by the plaintiff for infringement and passing off of its registered trade mark "Arogya" by the defendants and causing damage to the goodwill and reputation earned by the plaintiff, has been dismissed summarily with costs.

2. The appellant herein, being the plaintiff, filed the suit for infringement and passing off of its registered trade mark "AROKYA" by the defendants and causing damage to the goodwill and reputation earned by the plaintiff stating that the plaintiff is India's one of the largest Private sector in the dairy products and it has established dairies at various places in South India with state of art facilities meeting the high norms of hygiene and health. Besides milk, the plaintiff is also engaged in manufacturing other dairy products like ice creams, dairy whitener, skimmed milk powder AGMARK certified ghee, butter, cooking

butter, varieties of curd, panneer and butter milk. Its products are exported to 32 countries including Africa, Middle East and other East Asian countries. The said products are marketed through various brands such as ARUN, HATSUN, AROKYA, IBACO etc. The plaintiff has built up a very high and enviable reputation and goodwill for their products marketed under the trade mark, AROKYA by virtue of continuous uninterrupted and extensive use of the social market. It has adopted and used the trademark AROKYA in respect of milk and milk products since, 1994. The said trademark AROKYA has come to be distinctive and identified and associated with the plaintiff and has clearly acquired secondary meaning to connote and denote the products of the plaintiff. The plaintiff has very huge network of distribution and marketing. Its products are available everywhere and the trademark has acquired the status of well known mark. Hence, it vigilantly protects its rights with respect to the trade mark AROKYA and has filed applications for registration of the trade mark AROKYA in respect of all the classes in the nice classification and has obtained registrations for its products as below:-

Number	Class	Date of Filing	Status
2871323	1	29.12.2014	Registered
2871324	2	29.12.2014	Registered
2871325	3	29.12.2014	Registered
2871326	4	29.12.2014	Registered
2871327	5	29.12.2014	Pending
2871328	6	29.12.2014	Registered
2871329	7	29.12.2014	Registered
2871330	8	29.12.2014	Registered
2871331	9	29.12.2014	Registered
2871332	10	29.12.2014	Registered
2871333	11	29.12.2014	Registered
2871334	12	29.12.2014	Registered

2871335	13	29.12.2014	Registered
2871336	14	29.12.2014	Registered
2871337	15	29.12.2014	Registered
2871338	16	29.12.2014	Registered
2871339	17	29.12.2014	Registered
2871340	18	29.12.2014	Registered
2871341	19	29.12.2014	Registered
2871342	20	29.12.2014	Registered
2871343	21	29.12.2014	Registered
2871344	22	29.12.2014	Registered
2871345	23	29.12.2014	Registered
2871346	24	29.12.2014	Registered
2871347	25	29.12.2014	Pending
2871348	26	29.12.2014	Registered
2871349	27	29.12.2014	Registered
2871350	28	29.12.2014	Registered
2871351	29	29.12.2014	Registered
2871352	30	29.12.2014	Pending
2871353	31	29.12.2014	Registered
2871354	32	29.12.2014	Registered
2871355	33	29.12.2014	Registered
2871356	34	29.12.2014	Registered
2871357	35	29.12.2014	Registered
2871358	36	29.12.2014	Registered
2871359	37	29.12.2014	Registered
2871360	38	29.12.2014	Registered
2871361	39	29.12.2014	Registered
2871362	40	29.12.2014	Registered
2871363	41	29.12.2014	Pending
2871364	42	29.12.2014	Registered
2871365	43	29.12.2014	Registered
2871366	44	29.12.2014	Registered
2871367	45	29.12.2014	Registered

3. While so, the defendants filed various applications for trademark 'AAROGYA' either alone or in combination of other words. The plaintiff on coming to know about it, issued separate notice of oppositions, dated 09.10.2015 before the concerned Trademark Registry and the same are pending. In the month of June 2016, the plaintiff came across the products of the first defendant, namely biscuits sold under the trademark PATANJALI AAROGYA. To the plaintiff notice to cease and desist from using the trademark AAROGYA which amounts to infringement of its well known trade mark AROKYA, the

first defendant has replied that these two marks are distinct and different. Earlier, when two other applications were made for registration of trademark under class 5 and class 29, the plaintiff filed its objections and same was abandoned by the defendants. Now under class 30, they have obtained registration for PATANJALI AAROGYA. Hence, the plaintiff has already initiated opposition proceedings before the trade mark registry against the defendants' trademark and the same is pending. The plaintiff alleges that the use of the offending trademark PATANJALI AAROGYA by the defendants is an act of dishonesty and solely with bad faith. It is an infringement of the plaintiff's registered trademark as the defendants are using the offending trademark with respect to the biscuits made out of milk. This is in the teeth of the fact that the defendants have obtained registration for milk and dairy products in respect of which the plaintiff's trademark AROKYA is extensively used and thus committed a serious act of infringement of the plaintiff's registered trademark. It was also alleged that the defendants are passing off their goods as that of the plaintiff by using the offending trademark PATANJALI AAROGYA. Therefore, the plaintiff sought for a judgment and decree seeking the following reliefs:-

> (a) For permanent injunction restraining the defendant by itself, its agents, servants or any one claiming through it from in any manner infringing the plaintiff's trade mark 'AROKYA' by using the trademark 'AAROGYA' or any other mark or marks which are in any way identical or deceptively similar or colourable imitation of the plaintiff's registered trademarks as described in the Schedule to the plaint.
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> (b) For permanent injunction restraining the defendant by itself,

its servants or agents or anyone claiming through it from in any manner passing off its products as that of the plaintiff by using the offending trademark 'AAROGYA' which are similar, deceptively similar and identical to the plaintiff's trademark 'AROKYA' or by using any other trademark which is similar, deceptively similar or identical to that of the plaintiff's trademark 'AROKYA' by manufacturing or selling or offering for sale or in any manner advertising the same.

(c) Directing the defendant to surrender to the plaintiff the entire products with the offending labels, stocks with offending labels together with the blocks and dies, name boards, sign boards etc for destruction.

(d) Directing the defendant to render true and faithful accounts of the profits earned by them through the sale of the offending milk products bearing the offending trademark label and directing payment of such profits to the plaintiff.

(e) Directing the defendant to pay to the plaintiff the cost of the suit.

4. Pending the suit, the plaintiff also filed O.A.Nos.33 & 34 of 2019 seeking for an order of interim injunction restraining the defendants from in any manner infringing the plaintiff's trademark 'AROKYA' and also from passing off its products by using the offending trademark AAROGYA. This Court, by order dated 28.02.2019, granted an order of interim injunction for a period of four weeks i.e., till 28.03.2019.

5. Aggrieved by the above order, the defendants, by way of written statement and counter, filed A.Nos.2230, 2231 & 2920 of 2019 seeking to vacate the order of interim injunction and also to dismiss the suit summarily, contending *inter alia* that the suit for infringement is not maintainable. The

word 'AAROGYA' is a Sanskrit word which means 'overall well being'. The second defendant is carrying on business since 2006 in natural health, food, personal care, home care and allied fields including yoga related practices. The plaintiff is engaged only in milk and milk products and marketing the same using the trademark 'AROKYA'. The plaintiff's have not diversified in manufacturing any other products apart from milk and dairy related products using the said trademark. The product of the plaintiff and the product of the defendants are entirely different. 'AROKYA' for milk and milk products and 'PATANJALI AAROGYA' for biscuit are distinct and totally different. They are non-identical and distinctive. They are phonetically and visually dis-similar. This will no way damage the goodwill or reputation of the plaintiff. Further, the defendants products also share a good reputation among consumers. The defendants products are marketed all over India and in the said effect, several crores of rupees is spent for advertising their products with the word "Patanjali". The suit is filed suppressing the fact that the defendants are the registered owners of the trademark "Patanjali Aaroyga" both in English and Hindi under class 30. The plaintiff has not got the trademark registration under class 30. Under the Trade Marks Act, no suit for infringement can be instituted against a registered trademark holder. In view of sections 28 and 134 of the Trade Marks Act, the suit is not maintainable. When suit for infringement itself is not maintainable, the relief for passing off also not maintainable. Further, the

defendants 1 and 2 are carrying on business at Kolkatta and New Delhi respectively. For relief of passing off, suit has to be filed at the defendants place. Hence, for lack of jurisdiction and for being barred by law, the suit has to be dismissed by passing a summary judgment holding that the plaintiff has no real prospect to succeed in the suit.

6. The learned Judge, by order dated 05.07.2019 in O.A.Nos.33, 34 of 2019, A.Nos.2230, 2231 & 2920 of 2019, after hearing the parties, passed the following order:-

> "16. Legal obligation of one party to a victim as a result of a civil wrong or injury requires some form of remedy from a court system. A tort liability arises because of a combination of directly violating a person's rights and the transgression of a public obligation causing damage or a private wrong doing. Evidence must be evaluated in a court hearing to identify who the tort feasor / liable party is in the case.
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> 17. It is relevant to point out that there is no interconnectivity between the products sold by the Plaintiff and the Defendants and the classes of registration are also different, as the Plaintiff's trademark was registered under Class 29, whereas the products of the Applicants/Defendants was under Class 30. The Plaintiff's Trademark "Arokya" was familiar amongst general public in connection with milk and milk products only, whereas the Applicants/Defendants involve in

preparation of biscuit related items. In this regard, I find much force in the contention raised by the learned counsel for the Applicants/Defendants that the mark has to be viewed as a whole and together and cannot be looked into in a divided form and in an isolated manner.

18. It is seen that the Applicants/Defendants are carrying on its business under the Trademark "Patanjali Aarogya" for nearly three years and the Plaintiff, having kept quiet all these years, cannot attempt to stall the business of the Applicants/Defendants on one fine morning, unless there is a specific finding in the suit after full fledged trial. Hence, this Court finds that there is no need for an interim order to be in operation and therefore, the interim injunction granted by this Court on 28.02.2019, which was later on ordered to be kept in abeyance for shorter period, is liable to be vacated.

19. Accordingly, Application Nos.2230 and 2231 of 2019 are ordered and the interim injunction granted by this Court in O.A.Nos.33 and 34 of 2019 on 28.02.2019 is hereby vacated.

21. A.No.2920 of 2019 filed to pass a summary judgment is dismissed, in view of the fact that the interim order granted by this Court is vacated and the entire issues, such as damages, jurisdiction, passing off, etc need to be decided after full-fledged trial by letting the respective parties to adduce both oral and documentary evidence.

22. It is made clear that the observations made herein above are only for the purpose of disposal of these

Applications and it will have no bearing on the main suit to be decided."

7. Aggrieved by the above order, the plaintiff and the defendants filed O.S.A.Nos.264, 284 & 285 of 2019 respectively, and the Division Bench of this Court, by order dated 05.11.2019, disposed of the appeals with the following observations:-

> "6. The learned counsel for the defendants Mr.P.Giridharan, submits that the learned Single Judge has summarily rejected the application in Application No.2920/2019, filed by the defendants, to pass a Summary Judgment under Order XIIIA of the Code of Civil Procedure without any reason and since the said application filed by the defendants was filed before framing of issues and the full fledged trial of the said suit would defeat the very purpose of XIIIA of Commercial Courts Act, 2015 (4 of 2016) as inserted in the Code of Civil Procedure Code.
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> 7. On the other hand, the learned counsel for the plaintiff/respondent Mr.Aashishjazn Lunza submits that the issues raised in the plaint deserves full fledged trial and rejection of the Application No.2920 of 2019, filed by the defendants, was justified. He further submits that even vacating of the injunction granted earlier in favour of the plaintiff was not justified and therefore, he has

also filed Cross Appeals viz., O.S.A. Nos.284 and 285 of 2019 before this Court.

8. Having regard to the above submissions and perusing the materials available on record, the learned Single Judge has given cogent reason for vacating the injunction and hence, we are not inclined to interfere with the order passed by the learned Single Judge in Application Nos.2230 and 2231 of 2019. Therefore, O.S.A.Nos.284 and 285 of 2019 are dismissed.

9. But, we note that the rejection of the Application No.2920 of 2019, filed by the defendants, to pass a summary judgment, has been summarily rejected by the learned Single Judge without giving any conjoint reasons.

10. Certainly, a full fledged trial of a suit will consume a lot of time of the Court and therefore, unless there are cogent and strong reasons as envisaged under Order XIIIA of the Civil Procedure Code as applicable to commercial disputes under the provisions of the Commercial Courts Act, 2015 (4 of 2016), inserted in the Code of Civil Procedure, the dismissal of the Application by the learned Single Judge in Application No.2920 of 2019, for summary judgment, is not sustainable.

11. Since the learned Single Judge has not dealt with these aspects, we are inclined to allow the present appeal, filed by the defendants. Accordingly, O.S.A.No.264 of 2019 is allowed and we set aside the

order passed by the learned Single Judge in Application No.2920 of 2019 and the matter is remitted back to the learned Single Judge to decide the Application No.2920 of 2019, filed by the defendants to pass a Summary Judgment once again as expeditiously as possible.

12. With the above directions, all the appeals are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed."

8. On the matter being remanded, the learned single Judge has taken up the Application No.2920 of 2019 filed by the defendants for fresh consideration and by the impugned order dated 07.02.2020, has allowed the application and dismissed the suit with costs, observing as follows:-

"25.Order XIII Rule (3) C.P.C., states the grounds for summary judgment. The Court may give a summary judgement against a plaintiff or defendant on a claim if it considers that

a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

26. First it has to be seen, 'whether there is any

compelling reason to record oral evidence in this case'. The statements made by the plaintiff in the plaint are substantially accepted by the defendants, except the plea regarding the status of 'well known trademark' and the allegation of infringement. The defendants have not seriously controverted other facts averred in the plaint. When the plaintiff proprietorship of the trademark "Arokya" and the use of the trademark 'Patanjali Aarogya' by the defendants is not in dispute for facts admitted no proof required. Therefore, there is no compelling reason in this case for recording oral evidence.

27.Next, we have to see 'whether there is any real prospect of success for the plaintiff'. As discussed earlier, when section 12 of the Trade Marks Act give discretion to the Registrar to permit registration by more than one proprietor of the trademark which are identical or similar in case of honest concurrent use and when section 28(3) of the Trade Marks Act permits coexistence of two or more owners of identical or nearly similar trademark, the plaintiff prospect to succeed is nil even if the plaintiff averments are taken as proved in toto.

28. Apart from the statutory impediment for the plaintiff to succeed, even on facts, the case of the plaintiff has no possibility of success because, the product of the defendants is not identical or similar to

that of the plaintiff. The class under which the defendants holding his trademark registration is different from the class under which the plaintiff holds trademark registration. The plaintiff has not in the trade of manufacturing biscuits and no sign of its intention to involve in biscuit manufacturing in future.

29. As reprimanded by the Supreme Court in Vishnudas case (cited supra), the plaintiff cannot try to have monopoly over the trademark for all products and prevent others using the mark for the goods which the plaintiff not producing. Further, the litmus test for infringement is not only the phonetic similarity or visual similarity but also to attract section 29(2) of the Trade Marks Act, the similarity or identity must likely to cause confusion on the part of the public, or 'whether is likely to have an association with the registered trademark'. To attract section 29(4) of the Trade Marks Act, the registered trademark must have reputation in India and the use of the mark without due cause takes unfair advantage or is detrimental to, the distinctive character or repute of the registered trade mark.

30.By using the word ‘Aarogya’ along with the word ‘Patanjali’ for the biscuits manufactured by the defendants can no way be detrimental to the milk or milk product of the plaintiff marketed in the name “Arokya”. In fact the brand ‘Patanjali’ due to its vast presence in the market through various products enjoys

secondary meaning and it is not the word "Arogya" a generic word which enjoys secondary meaning. The averment of the plaintiff that the defendants attempt to steal the bulwark and palladium created by the plaintiff is a shallow jargon borrowed from judicial pronouncement. The allegation against the defendants that the plaintiff's good will at stake and reputation is in peril are only an illusion but not real.

31. For the said reasons, the application is allowed and consequently, the suit is dismissed with costs."

9. Questioning the correctness of the impugned order, the appellant/plaintiff has filed the present appeal before this Court.

10. The learned counsel appearing on behalf of the appellant would submit that the appellant is India's one of largest private sector dairy and in fact one of the market leaders in the food processing industry. It is involved in the manufacture and marketing of various food products including milk and dairy products and has been doing the business from 1970 and using the trademark AROKYA since 1994 and is also the registered proprietor of the trademark AROKYA under Class 29 for milk and dairy products and also under Class 30 for products such as ice creams, deserts and confectionery. The appellant has

registration for the trademark AROKYA, both for the word as well as its devices and continues to enjoy its proprietary rights obtained through such registrations and earned their goodwill and reputation with respect to its trademark AROKYA. They came to know about the trademark applications made by the first respondent for registering the trademark AAROGYA. The appellant opposed the trademark applications through separate notice of opposition filed with the Trademarks Registry on 09.10.2015 and the same are also pending. Subsequently, the appellant, in the month of June 2016, came to know that the first respondent sold the products under the trademark PATANJALI AAROGYA and the appellant dispatched the notice dated 14.06.2016. The first respondent sent a reply dated 30.06.2016 contending that the two marks were different from one another, which is wholly untenable in law. Further, the second respondent also filed trademark applications, for which the appellant filed the opposition applications and immediately, the appellant filed the suit for infringement and passing off caused to its trademark AROKYA in C.S.No.33 of 2019 and obtained an interim order of injunction. The respondents filed applications in A.Nos.2230 & 2231 of 2019 for vacating the interim order, taking a stand that the second respondent obtained registration even in the year 2016 for the trademark PATANJALI AAROGYA and despite the appellant's opposition, the second respondent has registered the trademark PATANJALI AAROGYA through fresh application. The respondents also filed an application in

A.No.2920 of 2019 for passing of summary judgment dismissing the suit invoking Order XIII-A, Rule 3 of Civil Procedure Code. The learned Judge vacated the interim order and also passed the judgment of summary dismissal in favour of the respondents quoting the decision of the Hon'ble Supreme Court in *Vishnudas Trading v. Vazir Sultan Tobacco Ltd., (1997) 4 SCC 401*, without considering the fact that the appellant has made huge investments and also the registered proprietor of the trademark AROKYA, which is a well known trademark in the market. The learned counsel also submitted that the respondents registered the very same trademark being phonetically similar, which affects the appellant's reputation, goodwill and also the profits by creating confusion in the minds of the public. The learned Judge also failed to consider the scope and object of the suit and also the relief sought for by the appellant for infringement and passing off. The learned Judge, without considering the fact that there are triable issues, which can be decided only after completion of pleadings, framing of issues and after a full-fledged trial after recording of evidence, ought not to have dismissed the suit by passing the summary judgment at the preliminary stage. Therefore, the learned counsel submitted that the judgment and decree passed by the learned single Judge are liable to be set aside.

11. The learned counsel appearing on behalf of the respondents would

submit that the appellant's trademark AROKYA is only associated with the milk and milk products falling under class 29 and not under class 30, as its application is pending consideration, whereas the respondents are the registered proprietor of the trademark PATANJALI AAROGYA for multigrain biscuit falling under class 30, which is a well known trademark. Further, the products of the respondents are protected under Section 28(3) of the Trade Marks Act, which are sold all over India, whereas the appellant's products are sold only in South India. Therefore, there is no question of confusion in the minds of the public, as both the products are distinct. Therefore, the learned Judge rightly held that the appellant cannot claim monopoly in the trade and cannot prevent the other registered proprietor of the trademark from marketing their products by taking advantage of the phonetic similarity. The learned Judge, after considering Sections 28(3) & 29 of the Trade Marks Act and also Order XIII A of Civil Procedure Code, as amended in the Commercial Courts Act, 2015, which lays down the procedure by which the Court may decide a claim pertaining to any commercial dispute without recording oral evidence, has held that there is no need to go for a full-fledged trial, as there is no compelling reason in this case for recording oral evidence, as the products of the appellant and the respondents are distinctive and the claim of the appellant is barred under Section 28(3) of the Trade Marks Act, has rightly passed the summary judgment and rejected the claim of the appellant. Therefore, the learned counsel

submitted that there is no merit in the appeal and the same is liable to be dismissed.

12. We have heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

13. The specific case of the appellant is that the respondents are using the offending trademark PATANJALI AAROGYA, though under class 30, in respect of the biscuits made out of milk by committing an act of infringement of the registered trademark of the appellant AROKYA for milk and dairy products with dishonesty and bad faith and thereby passing off their goods as that of the appellant by using the offending trademark, which necessitated the appellant to file the suit for infringement and passing off, on the ground that it has caused damage to the goodwill and reputation earned by the appellant.

14. The case of the respondents is that that the suit for infringement is not maintainable, as the word 'AAROGYA' is a Sanskrit word which means 'overall well being' and the second respondent is carrying on business since 2006 in natural health, food, personal care, home care and allied fields including yoga related practices. Whereas the appellant is engaged only in milk and milk

products and marketing the same using the trademark 'AROKYA' in South India. The product of the appellant and the product of the respondents are entirely different, since the trademark 'AROKYA' is used for milk and milk products and 'PATANJALI AAROGYA' is used for biscuits, which are non-identical and distinctive in the market. Though they are phonetically and visually dis-similar, this will no way damage the goodwill or reputation of the appellant. Further, the respondents' products also share a good reputation among consumers, as they are marketed all over India and in the said effect, several crores of rupees is spent for advertising their products with the word "Patanjali". The appellant has filed the suit suppressing the fact that the respondents are the registered owners of the trademark "Patanjali Aaroyga" both in English and Hindi under class 30 and the appellant has not got the trademark registration under class 30. In view of sections 28 and 134 of the Trade Marks Act, the suit for infringement is not maintainable against a registered trademark holder. When suit for infringement itself is not maintainable, the relief for passing off also not maintainable.

15. The point for consideration in this appeal is whether the summary judgment of dismissal passed by the learned single Judge is liable to be interfered with by this Court?

16. Admittedly, the appellant is the registered proprietor of the trademark AROKYA related to the milk and milk products marketed in South India and they filed the suit for infringement and passing off stating that the respondents have infringed the trademark of the appellant by using the offending trademark PATANJALI AAROGYA. Though the appellant initially obtained an order of interim injunction against the respondents, subsequently the said order came to be vacated by the learned single Judge. In the meanwhile, the respondents also filed the application under Order XIIIA, Rule 3 of the Civil Procedure Code, as amended in the Commercial Courts Act, 2015, for a summary judgment. The said application was allowed on the ground that the respondents also applied for registration of the trademark PATANJALI AAROGYA in respect of selling of biscuits in the market. Though the appellant filed an application raising objections before the Registrar of Trade Marks, the same is yet to be decided falling under the exclusive domain of the Registrar of Trade Marks. The bone of contention on the side of the appellant is that the respondents have infringed the trademark of the appellant, since they are phonetically similar by the expression 'Arokya' or 'Aarogya' and therefore the people would get confusion. In order to safeguard its goodwill and reputation, the appellant filed the suit for infringement and passing off. But the specific case of the respondents is that the products marketed by the appellant and the respondents are distinctive and dis-similar and initially the appellant registered the trademark for the sale of milk,

which was subsequently extended to the other dairy products. Whereas the respondents registered the trademark AAROGYA with the prefix PATANJALI in respect of the biscuits sold all over India. The appellant also suppressed the fact that the respondents are the registered proprietor of the trademark PATANJALI AAROGYA both in English and Hindi under class 30 and that the appellant registered the trademark only under class 29 and not under class 30. Therefore, the appellant's trademark concerns with the milk and milk products, whereas the respondents' trademark concern with the biscuits and other items. Though one of the contentions raised on the side of the appellant that for manufacturing biscuits, milk is used, the said argument is not sustainable. As far as the trademark is concerned, if the people or the customers get confused, they would not go deep into the contents of the products. They will only see the similarity and if the same products under the same trademark are marketed, the people may get confused and the goodwill and reputation may get spoiled. However, in this case, as pointed out by the learned counsel for respondents, the learned single Judge has observed that the appellant's trademark was under class 29 and the respondents trademark was under class 30 and further the products marketed by the parties are also distinct and not similar, as the respondents trademark is prefixed with the word 'Patanjali' and when the respondents filed the application for registration of trademark, the appellant also opposed the same and the same is pending before the Trade Marks Registry.

Further, when Section 12 of the Trade Marks Act gives discretion to the Registrar to permit registration by more than one proprietor of the trademark which are identical or similar in case of honest concurrent use and when Section 28(3) of the Trade Marks Act permits coexistence of two or more owners of identical or nearly similar trademark, the appellant's prospect to succeed is remote even if the averments made by the appellant are taken as proved in toto. The learned Judge has also dealt with the legal provisions in relation to the products marketed by the appellant and the respondents and found that no oral evidence is required to decide the issue involved in this case. The main question is as to whether the respondents are entitled to register the trademark in the name of PATANJALI AAROGYA and the learned single Judge, applying the principle laid down by the Hon'ble Supreme Court in *Vishnudas Trading case* (cited supra), finding that the goods falling under clause 30 (biscuits) are entirely different from the goods falling under clause 29 (milk and milk products) and the respondents are protected under Section 28(3) of the Trade Marks Act, and also the scope of Order XIII Rule 3 of the Civil Procedure Code, as amended in the Commercial Courts Act, empowering the Court to pass a summary judgment, has allowed the application filed by the respondents and dismissed the suit of the appellant.

17. On overall consideration of the materials, this Court finds that there is no reason to interfere with the judgment and decree passed by the learned single Judge. Accordingly, the original side appeal stands dismissed. There shall be no order as to costs.

(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)
21-04-2026

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

ss

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

SS

Judgment in OSA
No.263 of 2020

21-04-2026