

(2017) 02 DEL CK 0220

In the Delhi High Court

Case No : 7941 of 2012

ABHOY KUMAR JAIN

APPELLANT

Vs

VRAJLAL MANILAL & COMPANY AND OTHERS

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Citation : (2017) 02 DEL CK 0220

Hon'ble Judges : Sanjeev Sachdeva

Bench : SINGLE BENCH

Advocate : Sanjeev Sindhwani, Ajay Amitabh Suman, Ripu Daman Bhardwaj

Judgement

1. The petitioner impugns order dated 07.11.2012 passed by the Intellectual Property Appellate Board (hereinafter referred to as the IPAB), allowing the Original Rectification Application filed by the respondent for removal of the mark of the petitioner "Tufan" under registration No.1148910, in class 34, thereby rectifying the trademark of the petitioner.
2. The respondent claims to be a registered proprietor of trademark "Toofan Bidi", registered consequent to registration application TM-1 filed on 17.10.2001. The petitioner claims to be a registered proprietor of the impugned trademark "Tufan" applied vide the TM-1 filed on 07.11.2002.
3. The respondent filed the rectification application seeking rectification of the register of the Registrar of Trade Marks and for removal of the trademark "Tufan" registered in favour of the petitioner.
4. There is no dispute between the parties that the parties consider the rival trademarks as deceptively similar. The dispute is with regard to the priority in adoption of the mark by the parties. Both the parties dispute the claim of each other with regard to the date of the respective adoption. The petitioner claims to have adopted the mark "Tufan" in the year 1998 and the respondent claims to have adopted the mark "Toofan Bidi" in the year 1999. The petitioner disputes that the respondent adopted the mark in the year 1999 and contends that the

same was adopted much later and likewise the respondent disputes that the petitioner adopted the mark in the year 1998 and contends that the same was adopted much later than what is claimed.

5. On 07.11.2012, when the petition was listed before the IPAB and disposed of by the impugned order, the petitioner (respondent before IPAB) was not present. It is contended by the petitioner that on account of medical reasons of the mother of the petitioner, the petitioner could not before the IPAB, thus there could be no representation.

6. The impugned order dated 07.11.2012 is assailed, inter alia, on the ground that the order is an ex parte order and does not take into account the various contentions and submissions as well as the documents placed on record by the petitioner.

7. It is contended that though the order records that the IPAB has considered the material placed before it, the order does not give any reasons for accepting the contention of the respondent and rejecting the statement of defence and the material placed by the petitioner before the IPAB. It is contended that the IPAB has not even examined the material placed by the petitioner.

8. Learned senior counsel for the petitioner pointed out to certain invoices filed by the respondent before the IPAB to contend that these were not genuine as there were certain discrepancies in the said invoices.

9. Without going into the controversy being raised by the petitioner with regard to the genuineness or otherwise of the material placed by the respondent before the IPAB, since the impugned order is an ex parte order and apparently does not consider the statement of defence and the material placed by the petitioner before the IPAB, the impugned order dated 07.11.2012 is set aside. The Trademark of the petitioner "Tufan" is restored on the register of Registrar of Trademarks. The matter is also remitted to the IPAB for reconsideration of the case of the parties.

10. Learned senior counsel for the petitioner has contended that there are certain more documents and evidences that the petitioner would like to place before the IPAB. He contends that the said material has been placed on the record of this case. Learned counsel for the respondent opposes the request for filing additional documents and evidences.

11. Since I have set aside the impugned order and passed an order of remit, solely on the ground that the order is an ex parte order and has not taken into account the statement of defence and the material placed by the petitioner before the IPAB, I am not considering the prayer of the petitioner for filing additional documents/evidence before the IPAB and leave it to the discretion of the IPAB to consider the prayer in accordance with law, if such a prayer is made to the IPAB.

12. Since the rectification was filed in the year 2006 and the order impugned

herein was passed in 2012, I deem it expedient to direct the IPAB to expedite the hearing of the petition and dispose of the same preferably within a period of six months from the date the matter is taken up for the first time by the IPAB.

13. It is clarified that the Court has not examined the merits of the contentions of either the petitioner or the respondent and has passed the order of remit in the limited circumstances, as noted hereinabove.

14. Learned counsel for the parties inform that on account of insufficient number of members, no sittings of the IPAB are being held. Parties are given liberty to approach the IPAB for fixing an earlier date for commencing the hearing in the matter once the Appellate Board is reconstituted.

15. The Writ Petition is disposed of in the above terms.

16. There shall be no order as to costs.

17. The Registry is directed to transmit the records of the IPAB back to the IPAB, as expeditiously as possible.

18. Dasti under the signatures of the Court Master.