
(2010) 07 IPAB CK 0009

In the Intellectual Property Appellate Board

Case No : M.P. No. 148 Of 2008 In OA/42/2006/TM/MUM

Agar Distributors (India)

APPELLANT

Vs

Registrar Of Trade Marks And Ors.

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2010) 07 IPAB CK 0009

Hon'ble Judges : S. Usha, J; Syed Obaidur Rahaman, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Usha, J

1. Miscellaneous petition filed by the Appellant to take on record the documents filed along with the reply to the counter statement. The petition has

been filed on the grounds that the Petitioners were prior registered proprietors of the trade marks 'FIVE STAR' in class 1 and were under the

bonafide impression that the Registrar being the custodian of the records would look into those registrations and that the documents need not be

produced in proof. The Registrar ought to have considered the same and decided the case in the interest of justice. As the Registrar has not

considered those documents while passing the impugned order, the Petitioner/ Appellants prays that those documents be taken on record. The

documents if not taken on record, grave harm, loss and injury would be caused to the Petitioner, on the other hand, if documents are taken on record

no loss or hardship would be caused to the Respondent.

2. The Respondent filed their counter to the miscellaneous petition opposing the

prayer to take on record the additional documents. The counsel further stated that the miscellaneous petition is baseless, false, mischievous and invalid. The Petitioner were aware of the fact that they were to produce evidence to prove their case, but having failed to do so, cannot now file at this belated stage to bring in a new case. The Petitioner is only trying to delay the registration of the certificate.

3. We have heard both the counsel. Both the counsel re-iterated what was stated in the miscellaneous petition and the counter respectively. The counsel for the Respondent further pointed out to the provision of Order 41 Rule 27 Code of Civil Procedure as this was an appeal against the order of the Registrar of Trade Marks.

4. The only issue is whether additional documents can be taken on record in an appeal. The petition is therefore to be dealt under Order XLI Rule 27

of the Code of Civil Procedure which reads as here under:

27. Procedure for additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other

substantial cause, The Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

5. On a bare reading of the provisions, it is necessary that the Petitioner should satisfy either of the conditions to accept the additional documents. The

three conditions stipulated in the provisions are (1) the lower court refused to accept those documents or (2) the Petitioner in spite of due diligence

could not trace those documents to place before the lower court or (3) the appellate courts requires those documents for pronouncement of judgments.

6. In the case on hand, the Petitioner's contention was that they had not produced any documentary evidence as they were under the impression that those documents were in the custody of the Registrar and the same should have been considered by the Registrar. While that is the only reasons for not producing the documents, we do not think it valid to take those documents at this stage. The instant matter before us, is an appeal whereby taking additional documents on record, the Petitioner/Appellants is allowed to bring in a new case which is our considered opinion cannot be allowed. The Petitioner has not satisfied any of the conditions provided under Order 41 Rule 27 of the Code of Civil Procedure. In such circumstances, we are of the view that the miscellaneous petition is merit less and deserves to be dismissed.

The miscellaneous petition is therefore dismissed with no order as to costs.