

(2022) 07 DEL CK 0089

In the Delhi High Court

Case No : Letter Patent Appeal No. 83 Of 2022, Civil Miscellaneous No. 6080 Of 2022

Amir Education Society

APPELLANT

Vs

Delhi Public School Society

RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Trade Mark Act, 1999 — Section 134

Citation : (2022) 07 DEL CK 0089

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : Jagdev Singh, Mahavir Singh Chahar, Panchajanya Batra, Virendra Maurya, Sachin Saini, Puneet Mittal, R.P. Singh, Mohit Chandra

Final Decision : Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present Letters Patent Appeal is arising out of the order dated 01.04.2009 passed in W.P.(C.) No.12991/2018 as well as the order dated 15.12.2021 passed in Review Petition No.205/2021 The Amir Education Society Vs. The Delhi Public School Society.

2. The facts of the case reveal that the appellant before this Court/ The Amir Education Society is a society registered under the Societies Registration Act, 1860. It was registered on 05.08.2004 and the society is running Modern Delhi Public School located in Sector 87, Faridabad. The petitioner society has stated in the LPA is running the school for the last 18 years and provides all modern amenities to the students. The respondent/ The Delhi Public School Society is again a society registered under the Societies Registration Act, 1860 is running numerous schools under the name and style of Delhi Public School.

(i) A dispute arose between the appellant and the respondent in respect of the trademark Delhi Public School and C.S.(O.S.) No.733/2006 was filed before the

Delhi High Court against the appellant for permanent and mandatory injunction and rendering of accounts and damages. However, the plaint was returned back for lack of territorial jurisdiction on 24.09.2009.

(ii) A Civil Suit was preferred C.S. No.432/2011 before the Faridabad Court and was dismissed as withdrawn on 26.08.2015 on the ground that the proceedings could not have been continued before that Court as per Section 134 of the Trade Mark Act.

(iii) Rectification Petition No.ORA/199/200/TM/DEL6843 dated 31.08.2008 was preferred before the Intellectual Property Appellate Board. It was decided in favour of the Delhi Public School Society vide order dated 16.07.2018, whereby the trademark of the appellant was cancelled.

(iv) The appellant preferred a writ petition being W.P.(C.) No. 12991/2018 arising out of order dated 16.07.2018 and the same was disposed of on 01.04.2021.

3. The order dated 01.04.2019 passed in W.P.(C.) No.12991/2018 is reproduced as under:

"1. After some hearing, Mr. Davinder Kumar, Chairman of the petitioner society present in Court along with his counsel undertakes to change the name of its schools at Faridabad from Modern Delhi Public School to Modern International Public School with effect from 1 st of April, 2021. He further undertakes to file the necessary applications for change of name of schools to the concerned authority within a period of eight weeks from today with an advance copy to the counsel for the respondent.

2. The undertaking of the petitioner is hereby accepted.

3. The concerned authorities are directed to permit the change of name of the petitioner's schools to ensure that the petitioner's schools' new name is effective from of 1 st of April, 2021.

4. This writ petition and the pending application are disposed of in terms of the undertaking of the petitioner. The petitioner shall remain bound by the undertaking given to this Court.

5. Learned counsel for the petitioner seeks waiver of costs of Rs.50,000/- imposed by IPAB to which learned Senior Counsel for the respondent has no objection subject to the petitioner honouring the undertaking meaning thereby that if the petitioner does not honour the undertaking then the respondent shall recover the costs from the petitioner apart from initiating appropriate action for violating the undertaking.

6. Both the parties are directed not to give any publicity to the order of the IPAB or the order of this Court.

7. This Court appreciates the fair assistance rendered by learned counsel for both the parties in this matter.

8. Copy of this order be given dasti to counsel for the parties under signature of the Court master.”

4. The aforesaid makes it very clear that the petitioner decided to give up the challenge to the impugned order dated 16.07.2018 and gave an undertaking to adopt an alternate trademark. The petitioner’s Chairman was present in Court and in the presence of the parties the order was passed. The petitioner did not challenge the consent order and in fact applied for the trademark Modern International Public School, however, the same was not registered and documents on record reveal that the petitioner has obtained a registration of another trademark, i.e. Modern India Public School. The petitioner submitted an application on 22.05.2019 before the Authority for the trademark Modern International Delhi Public School as well as Modern India Public School and obtained a registration of another trademark, i.e. Modern India Public School.

5. In the considered opinion of this Court, the order was passed in writ petition based upon the consent/ concession of the parties and no appeal was preferred, the question of setting aside of the aforesaid order does not arise. The appellant after his application was rejected for the trademark Modern International Public School and the other application for Modern India Public School was accepted opted to prefer a review for reviewing order dated 01.04.2019 and the learned Single Judge has dismissed the application filed for review holding that there is no error apparent on the face of record. Paragraphs 10 to 13 of the order passed by the learned Single Judge reads as under:

“10. Having heard the Senior Counsels for the parties, in the opinion of Court, no ground for review of the order has been made out for the following reasons:

10.1. Prior to passing of the impugned Order, this Court on 25th March, 2019 had heard the matter partly, and in continuation thereof, had directed the Chairman of Petitioner to remain present before this Court. This becomes apparent from the order itself which reads as under:

“Arguments partly heard. List for continuation of the arguments on 01st April, 2019 at 02:30PM. The Chairman of the petitioner’s society shall remain present in Court on the next date of hearing. Counter affidavit be filed within three days. Rejoinder before the next date of hearing. Both the parties shall file brief note of submissions not exceeding three pages along with copies of the relevant documents and the relevant judgments with relevant portions duly highlighted for the convenience of this Court before the next date of hearing.” [Emphasis supplied]

10.2. Subsequently, on 1st April, 2019, the impugned Order was passed after affording a hearing to the parties – which is evident from the Order itself. Petitioner decided to give up challenge to the impugned Order, and instead, undertook to adopt an alternative mark. This decision of not proceeding further with the present petition was taken by the Petitioner’s Chairman who was present in Court. In terms thereof, indeed the Petitioner applied for the

registration of "Modern International Public School" as its trademark. However, the same as noted above, has been objected to. However, merely because the said mark has been objected to, it does not lead to conclusion that Petitioner is not in a position to adopt the same. That would be of course be subject to the outcome of the objection petition. However, this fact cannot be a ground to approach this Court for seeking a review of the order.

10.3. Further, if the mark was not available, Petitioner made no attempt hereto before to approach this Court. The order was also not assailed. Although, it has been averred that the Chairperson had no authority to give such a sweeping undertaking to the Court, and that no consultative exercise had been done on the issue, amongst stakeholders, these pleas do not appear to be credible. Petitioner, in fact, did actually proceed to apply for the trademark "Modern International Delhi Public School" – which unfortunately could not be successfully registered. This action of the Petitioner ratifies the decision taken by the Chairperson to adopt alternative mark.

10.4. The undertaking given by the Chairperson present in Court would bind the Petitioner and cannot be assumed to be without authority.

10.5 The option for Petitioner to challenge to the Order of the IPAB was voluntarily given up.

10.6 It also becomes evident from the documents placed on record that Petitioner has obtained a registration of another trademark – "Modern India Public School". Mr. Mittal, on instructions, has stated that he has no objection in case the Petitioner was to adopt the same. However, Petitioner's management as noted above has chosen not to opt the same. Be that as it may, the date of filing of the both marks with the Trademark Registry is the same viz. 22nd May, 2019. This however does indicate that Petitioner had applied for an alternate mark, knowing fully the possibility of hurdles in obtaining the registration of the impugned mark – which is now objected to.

10.7. There is no error apparent on the face of record. The scope of the present proceedings is limited.

11. Before concluding, Mr. Singh makes a request that the Court may consider granting extension of time for compliance of the order dated 1st April, 2019. He further submits that a contempt action has been initiated by the Respondent being CONT. CAS. 770/2021 – which is pending consideration before this Court.

12. In respect of the above-noted request, this Court can only observe that such request for grant of time for compliance should be made before the court considering the contempt petition – which shall be considered by the said court on its own merits, in accordance with the law.

13. In view of the foregoing, the Court finds no reason to entertain the present review petition, and accordingly, the same is dismissed along with all pending applications. Since the Court finds no merit in the present petition, there is no

good reason for the Court to condone the delay of 952 days in filing the review petition. The accompanying application seeking condonation of delay is, thus, also dismissed.”

6. In the considered opinion of this Court as the order dated 01.04.2019 was a consent order, the question of setting it aside in the present LPA only because the appellant was not able to get the trademark of his choice registered does not arise. It is nobody’s case that the consent was obtained by fraud, nor any other ground has been brought to the notice of this Court to hold that the consent was under coercion or given on account of other extraneous considerations and, therefore, this Court is of the opinion that the initial order dated 01.04.2019 does not warrant interference and as there was no error apparent on the face of record, the learned Single Judge has rightly dismissed the Review Petition. Paragraphs 10 to 13 of the order passed in the Review Petition read as under:

“10. Having heard the Senior Counsels for the parties, in the opinion of Court, no ground for review of the order has been made out for the following reasons:

10.1. Prior to passing of the impugned Order, this Court on 25th March, 2019 had heard the matter partly, and in continuation thereof, had directed the Chairman of Petitioner to remain present before this Court. This becomes apparent from the order itself which reads as under:

“Arguments partly heard. List for continuation of the arguments on 01st April, 2019 at 02:30PM. The Chairman of the petitioner’s society shall remain present in Court on the next date of hearing. Counter affidavit be filed within three days. Rejoinder before the next date of hearing. Both the parties shall file brief note of submissions not exceeding three pages along with copies of the relevant documents and the relevant judgments with relevant portions duly highlighted for the convenience of this Court before the next date of hearing.” [Emphasis supplied]

10.2. Subsequently, on 1st April, 2019, the impugned Order was passed after affording a hearing to the parties – which is evident from the Order itself. Petitioner decided to give up challenge to the impugned Order, and instead, undertook to adopt an alternative mark. This decision of not proceeding further with the present petition was taken by the Petitioner’s Chairman who was present in Court. In terms thereof, indeed the Petitioner applied for the registration of “Modern International Public School” as its trademark. However, the same as noted above, has been objected to. However, merely because the said mark has been objected to, it does not lead to conclusion that Petitioner is not in a position to adopt the same. That would be of course be subject to the outcome of the objection petition. However, this fact cannot be a ground to approach this Court for seeking a review of the order.

10.3. Further, if the mark was not available, Petitioner made no attempt hereto before to approach this Court. The order was also not assailed. Although, it has been averred that the Chairperson had no authority to give such a sweeping

undertaking to the Court, and that no consultative exercise had been done on the issue, amongst stakeholders, these pleas do not appear to be credible. Petitioner, in fact, did actually proceed to apply for the trademark "Modern International Delhi Public School" – which unfortunately could not be successfully registered. This action of the Petitioner ratifies the decision taken by the Chairperson to adopt alternative mark.

10.4. The undertaking given by the Chairperson present in Court would bind the Petitioner and cannot be assumed to be without authority.

10.5 The option for Petitioner to challenge to the Order of the IPAB was voluntarily given up.

10.6 It also becomes evident from the documents placed on record that Petitioner has obtained a registration of another trademark – "Modern India Public School". Mr. Mittal, on instructions, has stated that he has no objection in case the Petitioner was to adopt the same. However, Petitioner's management as noted above has chosen not to opt the same. Be that as it may, the date of filing of the both marks with the Trademark Registry is the same viz. 22nd May, 2019. This however does indicate that Petitioner had applied for an alternate mark, knowing fully the possibility of hurdles in obtaining the registration of the impugned mark – which is now objected to.

10.7. There is no error apparent on the face of record. The scope of the present proceedings is limited.

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12. In respect of the above-noted request, this Court can only observe that such request for grant of time for compliance should be made before the court considering the contempt petition – which shall be considered by the said court on its own merits, in accordance with the law.

13. In view of the foregoing, the Court finds no reason to entertain the present review petition, and accordingly, the same is dismissed along with all pending applications. Since the Court finds no merit in the present petition, there is no good reason for the Court to condone the delay of 952 days in filing the review petition. The accompanying application seeking condonation of delay is, thus, also dismissed."

7. This Court after careful consideration of the order dated 01.04.2009 and the order dated 15.12.2021 is of the opinion that the present LPA is devoid of merits and substance. It is an afterthought on the part of the petitioner to agitate the controversy which has been brought at naught on account of consent of the parties.

8. No case for interference is made out in the matter. The LPA is dismissed.