
(2009) 03 DEL CK 0270
In the Delhi High Court
Case No : Writ Petition (C) 7974 of 2005

Babu Ram Sethi

APPELLANT

Vs

Registrar of Trade Marks and Another

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Citation : (2009) 40 PTC 625

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S. Bhatia, Ekta Nayar Saini and Vandana Nathan, for the Appellant; Sushant. S., for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—Heard counsel for the parties.

2. After some hearing, Learned Counsel for Respondent No. 2 submitted that he has no objection to the cross-examination sought and the production of documents.

3. The second Respondent had sought for rectification of the registered trademark in favour of the Petitioner. The rectification proceedings were pending in the file of this Court, when pursuant to the amendment of the Trade and Merchandise Marks Act, 1958, the proceedings were transferred to the newly constituted Intellectual Property Appellate Board (IPAB). Prior to the transfer, this Court had, in the rectification proceeding, by order dated 08.01.2002, framed issues and directed the parties to file affidavit. The order enables the parties to cross-examine the witnesses. The applicant/Respondent No. 2 apparently did not file an affidavit. The present Petitioner, therefore, filed an application under Order 16 Rule 1 of CPC for summoning of witnesses with some records. These pertained to the documents and files in the control and possession of the d Superintendent/Inspector, Central Excise Office, Ahuja Complex, Hanuman Garh Road Abohar (Punjab), District Ferozepur. That application was allowed by an

order dated 16.01.2003. In these circumstances, the Petitioner moved an application, M.P. 84/2004 before the IPAB contending that the records should be produced and the applicant/second Respondent should be cross-examined.

4. By the impugned order, the IPAB rejected the application, reasoning that under provisions of the Act, it could adopt such procedure as was feasible; according to the Board, the parties could file affidavits and make their contentions on the existing materials.

5. From the above narrative, it is evident that this Court had directed filing of affidavit and also recorded that the witnesses would be cross-examined. By another order, the records sought by the present Petitioner were directed to be summoned. The reasoning of the Board, though facially attractive, ignores the fact that it did not at any point of time, after receipt of records from the High Court, decide to initiate de novo proceedings. The logical corollary, therefore, is that the previous proceedings continued to bind the parties; in the circumstances, the Board could not have concluded as it did in this case that it exercised independent powers u/s 92, while rejecting the application.

6. In view of the above as well as in the light of the consent expressed on behalf of the second Respondent, the impugned order is hereby set aside; the Tribunal shall take steps to enable the Petitioner to cross-examine the second Respondent before it and also ensure that the documents, which were directed to be summoned by the order of this Court dated 16.01.2003 are produced and considered during the course of this proceeding.

The writ petition is allowed in the above terms.