

(2014) 07 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 7467 of 2014

Babulal Data and Others

APPELLANT

Vs

Intellectual Property Appellate Board and Others

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Trade Marks Act, 1999 — Section 24 37 38 39 40

Citation : (2015) 2 GLR 1627

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Kamal Trivedi, Advocate General & Sr. Advocate, Harshit Tolia, Tejas Trivedi and R.H. Bhansali, Advocate for the Appellant; K.T. Dave, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.

1. Rule. Service of Rule is waived by learned Advocate Shri K.T. Dave for respondent No. 1, learned Advocate Shri Shakeel Qureshi for respondents No. 2 and learned Advocate Shri Harshadray Dave for respondent Nos. 3 to 5.

The present petition is filed by the petitioners under Arts. 14, 19(1)(g) and 226 of the Constitution of India as well as under the provisions of the Trade Marks Act, 1999 for the prayers, inter alia, that appropriate writ, order or direction may be issued quashing and setting aside the impugned order passed by respondent No. 1 - Intellectual Property Appellate Board (for short "the Board") dated 22-4-2014 on the grounds stated in the memo of petition.

Heard Shri Kamal Trivedi, learned Advocate General and Sr. Counsel, appearing with learned Advocate Shri H.S. Tolia for the petitioners, learned Advocate Shri K.T. Dave for respondent No. 1, learned Advocate Shri Shakeel Qureshi for respondent No. 2 and learned Counsel Shri S.K. Bansal appearing with learned

Advocate Shri H.A. Dave for respondent Nos. 3 to 5.

2. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi referred to the papers and the impugned order at Annexure-A. He referred to the background of the case and submitted that there are two groups and there were some disputes for which a family settlement was entered into culminating into S.B. Misc. Civil Appeal No. 2218 of 2011 and connected matters before the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur which passed an order, which is produced with the paper-book at Exh. VII. He submitted that an application with Form TM-24 was submitted before the Registrar of Trade Marks, Ahmedabad dated 27-9-2010 and the order came to be passed by the Registrar of Trade Marks, Ahmedabad dated 27-7-2012. He submitted that the respondent Nos. 3 to 5 group, who were the partners having interest in M/s. Vijay Industries, a partnership firm, retired and Form TM-24 was filed. Against this an appeal was preferred by respondent Nos. 3 to 5 before respondent No. 1 - Board along with an application for condonation of delay and the impugned order passed in the said application for condonation of delay is produced at Annexure-A.

3. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi emphasized that as could be seen from the order, the procedure adopted is curious and novel. He emphasized that when such an application for condonation of delay is filed, it is required to be heard and decided on the basis whether the explanation for sufficient cause is made out. He referred to the details of the dates and submitted that the appeal was moved before the Bench at Chennai and the petitioners here had to rush there praying for time to reply to such application for condonation of delay. However, without granting sufficient opportunity in compliance of the rules of natural justice, the impugned order came to be passed disregarding the procedure and the principles of natural justice. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi submitted referring to the order at Annexure-A, that it has been specifically observed in the order:

"At the outset, we are constrained to state that in respect of the knowledge of the proceedings are concerned, we are inclined to take up the issue only at the time of hearing the application for interim relief and not at this stage....."

4. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi submitted that, thus, without considering the aspect of sufficient cause, whether explanation or justification is made out for condonation of delay, the application is granted and it is stated that it can be considered at the time of hearing of the application for interim relief, meaning thereby, effectively the delay is condoned without providing any opportunity to the petitioners. He submitted that it is like putting the cart before the horse inasmuch as sufficient cause could be examined at a later stage and the delay is condoned first. He emphasized that it should have been first consideration of condonation of delay after providing an opportunity of hearing and filing a reply and then only the main matter or the other application or proceedings could be taken up. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi, therefore, submitted that had an opportunity been given, the

appellants would have pointed out that respondent Nos. 3 to 5 who had filed the appeal before the respondent-Board were riding two horses inasmuch as, on one hand, an application to recall the order has been pending before the Registrar of Trade Marks, Ahmedabad and on the other hand straightaway the appeal is filed.

5. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi referred to the papers and submitted that it cannot be said that the respondents were not aware. He pointedly referred to the papers to emphasize that the same lawyer who has filed the application before the Board on behalf of the respondents was the lawyer who had filed the application for the petitioners. He tried to reflect about the attitude of respondent Nos. 3 to 5 and submitted that the same lawyer who had made an application on behalf of the petitioners had filed the appeal before the respondent No. 1-Board with an application for condonation of delay, and therefore, the respondents cannot be heard to say that they are not aware. He further submitted that the ignorance claimed cannot be readily accepted and it could have been demonstrated. He submitted that the law of limitation is well-settled, and it is based on public policy that the issue cannot be kept alive. At the same time, the Courts are required to consider that if sufficient cause is made out, the delay may be condoned depending upon the justification. He emphasized that the right accrued in favour of the parties cannot be taken away, and therefore, such application for condonation of delay could have been decided in compliance of the rules of natural justice.

6. Learned Advocate General and Sr. Counsel Shri Trivedi submitted that the Trade Marks Act and the Rules provide that the Board can have its own procedure, but the procedure has to be followed. He therefore submitted that in fact the law prohibits, particularly Rule 10 of the Intellectual Property Appellate Board (Procedure) Rules, 2003 provide that two months' time is provided for filing a reply. He submitted that the application for condonation of delay could not have been granted. In support of his submissions, he has referred to and relied upon the judgment of this Court reported in *Manhargiri Rajgiri Goswami and Another Vs. District and Sessions Judge, Valsad and Others*, , and submitted that sufficient cause has to be considered and the discretion of the Court or authority is not unguided. Learned Advocate General and Sr. Counsel Shri Trivedi submitted that the concepts such as "liberal approach", "justice-oriented approach" etc. cannot be employed to jettison substantial law of limitation.

7. Per contra, learned Counsel Shri Bansal appearing with learned Advocate Shri Harshadray Dave made submissions at length referring to the background of the litigation between the two groups and tried to emphasize referring to the conduct of the petitioners. He submitted that the petitioners themselves have adopted unfair conduct in making the Form TM-24 before the Registrar of Trade Marks, Ahmedabad and the order came to be passed without any notice to the other side. He emphasized that because of the affidavit filed before the Registrar that there is no litigation pending, the order came to be passed which is also not a reasoned order. He therefore submitted that the respondents had to make an

application to recall the order. However, since the sitting of the Registrar is not held regularly it was kept pending, and therefore, the respondents had to file an appeal before respondent No. 1-Board having the sitting at Chennai. He submitted that in the meanwhile as the petitioners were using the trade mark which would affect and cause prejudice to the business of the respondent group, they had to initiate the proceedings. Learned Counsel Shri Bansal submitted that in the name of such objection to the condonation of delay, the petitioners desire to prolong the litigation so that they continue to enjoy the advantage. He submitted that they will use and enjoy the trade mark which may cause prejudice to the other group like the respondent Nos. 3 to 5 herein, and therefore, they had to pursue their remedy. He submitted that when an application for recalling the order before the Registrar was not heard they had to move the appeal and all that respondent Nos. 3 to 5 (other group) wanted was an audience or hearing so as to clarify the background with reference to the family settlement arrived at which is reflected from the order of the High Court of Rajasthan, Jaipur Bench. Learned Counsel Shri Bansal submitted that in view of the family settlement dated 17-12-2007 which is placed on record in the paper-book 2, it has been clearly stated that till finalization of the brand value, the brand will be transferred to a family trust and each unit will be the licensee for the use of the "Scooter" brand for mustard oil brand. Learned Counsel Shri Bansal emphasized that the brand was to be in the family trust and both the groups could use the same, and therefore, the application made before the Registrar of Trade Marks, Ahmedabad is showing the attitude of the petitioners.

8. Learned Counsel Shri Bansal, therefore, submitted that the trade mark is a family property and it could not have been used or sought to be transferred in the name of the petitioners. He has referred to the aspect of delay and stated that the petitioners group had changed the lawyer who had earlier made an application, and therefore, the respondent group was not aware and they came to know subsequently as explained which resulted in the delay. He submitted that as could be seen from the provisions of the Act and the Rules, the Board can have its own procedure and is not bound by the strict procedure of Civil Procedure Code. He therefore submitted that considering the grievance of respondent Nos. 3 to 5 who were the appellants before the Board, the Board condoned the delay and decided to proceed with the hearing of the appeal where the opportunity is available to both the sides, and therefore, the hue and cry made by the petitioners is without any basis.

9. Learned Counsel Shri Bansal referred to Sec. 45 of the Trade Marks Act, and pointedly referred to Sec. 45(3) and submitted that if such assignment or transmission is in dispute, the Registrar may refuse to register. He therefore submitted that had an opportunity been given to the respondent group, they would have lodged an objection pointing out the background of facts and the order would not have been passed by the Registrar of Trade Marks, Ahmedabad. He also referred to Sec. 92 of the Act and submitted that as provided, the Appellate Board is not bound by the procedure of Civil Procedure Code and shall

be guided by the principles of natural justice. Therefore, learned Counsel Shri Bansal submitted that considering the grievance made by the respondents herein, the appellants before the Board, the order came to be passed. He referred to the impugned order and submitted that they have considered the background of facts and in light of the well-settled position regarding the approach, while considering such application for condonation of delay, the impugned order has been passed. Learned Counsel Shri Bansal submitted that the impugned order passed by the Board on application for condonation of delay has referred to the well-accepted principles laid down by the Hon"ble Apex Court for the condonation of delay and it has been observed and quoted that while considering sufficient cause with reference to Sec. 5 of the Limitation Act, it must receive a liberal construction so as to advance substantial justice. Learned Counsel Shri Bansal therefore submitted that the impugned order does not cause any prejudice to the petitioners and the main appeal could be heard and decided.

10. Learned Counsel Shri Bansal has again tried to emphasize about the conduct of the petitioners. He has referred to the judgment reported in Kohinoor Paints Faridabad (P) Ltd. Vs. Paramveer Singh and Another, , and emphasized the observations made in Paras 2 and 5 to support his submission that the order of the Registrar of Trade Marks, Ahmedabad is in violation of the rules" of natural justice. Further, he has tried to submit that the Registrar of Trade Marks, Ahmedabad passed the order on the basis of the affidavit which is a falsehood as it stated that no litigation is pending, and therefore, any such order which has been obtained by fraud or misrepresentation is a nullity. He has referred to and relied upon the judgment in the case of Bawa Jagmohan Singh and Others Vs. The Registrar of Trade Marks and Others, and emphasized the observations made in Para 24. He submitted that in this judgment similar circumstances were there with regard to the M.O.U. and observations have been made that notice ought to have been issued. He has also referred to and relied upon the judgment in the case of Om Prakash Gupta Vs. Parveen Kumar and Another, . He has also referred to the judgment of the Hon"ble Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , and emphasizing the observations made in Para 8 submitted that if there is any fraud or misrepresentation and impropriety, then such an order is a nullity and it could be challenged anywhere.

11. Learned Counsel Shri Bansal therefore submitted that this Court may consider these aspects and again tried to submit that the petitioners filed a false affidavit before the Registrar of Trade Marks, Ahmedabad which led to the passing of the order dated 27-7-2012 which is a matter in challenge before the Appellate Board in appeal filed by respondent Nos. 3 to 5. He has also referred to and relied upon the judgment of the Hon"ble Apex Court reported in Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat and Others, , and emphasized the observations made therein including Para 12.

12. Learned Counsel Shri Bansal submitted that the submissions advanced on

behalf of the petitioners that the respondents have been riding two horses may be considered in background of these facts that they had to file an application for recalling the order before the Registrar of Trade Marks, Ahmedabad and when it took some time causing prejudice to the respondents, the appeal was moved with an application for condonation of delay. He has also referred to the order passed by the Board in one another case and submitted that it is perfectly valid, and therefore, there is no prohibition in pursuing the remedy.

13. In rejoinder, learned Advocate General and Sr. Counsel Shri Trivedi for the petitioners submitted that the talk of fraud which has been propagated is required to be examined with reference to the details and sequence of events. He submitted that the family settlement is arrived at on 17-12-2007, and it is required to be noted that in the litigation before the Rajasthan High Court the respondent group has not accepted the family settlement and in the present proceedings they are relying upon such settlement. He further submitted that when the affidavit was filed by the same Advocate before the Registrar of Trade Marks, Ahmedabad there were no litigations pending, and therefore, it cannot be said that there is any misleading statement. In fact, the same lawyer has been filing the application for the petitioners and also filing the application for the respondent group before the appellate authority. He submitted that the settlement and the partition suit which is pending before the Court at Rajasthan has no issues with regard to such property like the trade mark, and it has a reference to intangible assets. In any case, he emphasized that we are concerned with the impugned order for condonation of delay, and the approach which is required to be considered. He emphasized that if the opportunity was given every background of the facts could have been clarified which would have compelled the respondents herein to explain the sufficient cause for condonation of the delay. He submitted that this right has been taken away, and therefore, the present petition has been filed.

14. Learned Advocate General and Sr. Counsel Shri Trivedi submitted that even before the Hon''ble Apex Court in other proceedings the respondent group has accepted about the use of the trade mark, and therefore, the submission about the family settlement that it would remain in the name of the trust and both can use it, is far from truth. He submitted that similarly the registered owner of the trade mark "Scooter" brand is Vijay Industries and as some of the partners like the respondent group herein walked out the firm remained and the petitioner group continued the firm, and therefore, it has a reference to reconstitution of the firm and does not refer to any assignment of the trade mark which would require the procedure to be followed. He submitted that first the respondents have to establish about their right and in fact the conduct on their part with regard to honouring the family settlement which is discussed in the judgment of the High Court of Rajasthan will have to be examined. He therefore submitted that the present petition may be allowed so as to provide an opportunity before the delay is examined on explanation of the sufficient cause. At the cost of repetition, he emphasized that sufficient cause has to be made out before the

discretion could be exercised under the Limitation Act by the Court or the authority, and it is a well guided discretion based on the relevant facts which will have to be considered.

15. Learned Advocate Shri Shakeel Qureshi for respondent No. 2 has fairly submitted that the impugned order clearly reflects that without considering the relevant issue of sufficient cause the delay has been condoned and it has been observed that sufficient cause could be considered at the time of hearing the application for interim relief which is not a proper course to be adopted. He submitted that it is well accepted that Sec. 5 of the Limitation Act gives discretion to condone the delay on sufficient cause being shown. Therefore, sufficient cause has to be shown which will have to be considered on the basis of the facts in a given case after hearing the parties. Then only the main matter or other proceedings could be considered. In the facts of the case, it seems that the delay condonation application has been accepted without examining this aspect.

16. Learned Advocate Shri Shakeel Qureshi referred to and relied upon the judgment of the Hon''ble Apex Court reported in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, , and submitted that the Hon''ble Apex Court has considered the underlying principles of the Limitation Act as well as the broad approach in such matters. However, he submitted that while considering the delay, what are the relevant factors which are required to be considered is also laid down. He emphasized that the Hon''ble Apex Court has culled out broad principles which have been summarized. He pointedly referred to grounds (ix), (x), (xi), (xii) and emphasized the observations made in ground (ix) and (xii):

"(ix) the conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-bye in the name of liberal approach.

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(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception."

He emphasized that, therefore, the application for condonation of delay could not be dealt with in a routine manner as it has been observed, "an application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective." He, therefore, submitted that appropriate order may be passed.

17. In view of these rival submissions, it is required to be considered whether the present petition deserves to be entertained and allowed.

18. Though, both the sides have referred to the background of the dispute with

the family settlement and the litigations before the High Court of Rajasthan, Jaipur Bench at Jaipur, it is not much relevant for the purpose of deciding the present petition which is challenging the impugned order at Annexure-A. The order at Annexure-A is passed by the respondent No. 1 Board below the application for condonation of delay in filing the appeal before the Board challenging the order of the Registrar of Trade Marks, Ahmedabad. Therefore, it is the order passed in the application for condonation of delay which is required to be examined in background of the facts as well as the rival submissions.

19. Both the sides have made the submissions at length that it was like putting the cart before the horse and the approach resulted in denial of opportunity coupled with the fact that the order itself reflects that an application for condonation of delay is allowed without examining sufficient cause. On the other hand, the learned Counsel for the respondent group referred to the background and the conduct of the petitioners with submissions also with regard to fraud and the order having been obtained from the Registrar of Trade Marks, Ahmedabad which has led to filing of the appeal. He therefore tried to say that in fact had an opportunity been given by the Registrar of Trade Marks, Ahmedabad, by issuing notice, such order on the delay condonation application would not have been passed.

20. As could be seen from the impugned order itself, it is not in dispute that the application for condonation of delay is granted with an observation that sufficient cause could be considered at the time of hearing the application for interim relief/ interim order. Thus, it is evident that while considering the application for condonation of delay, the aspect of sufficient cause has not been examined at all. The law of limitation based on the public policy which gives a discretion to the Court or the authority to condone the delay on sufficient cause being shown also reserves the right or authority to deny exercise of discretion when sufficient cause is not made out. The word "sufficient cause" has been considered in catena of judicial pronouncements and what would constitute sufficient cause will depend upon the facts and circumstances in each case. Again, it is not merely the length of delay but the conduct and the attitude whether it is reflecting any kind of negligence, lethargy in pursuing the remedy which is relevant. Again, it has a reference to the bona fides in seeking such condonation of delay which has been considered. The emphasis made by learned Advocate General and Sr. Counsel Shri Kamal Trivedi referring to the background that had an opportunity been given it could have reflected and shown that no sufficient cause is made out, and therefore, the impugned order cannot be sustained is required to be examined closely.

21. Though, the submissions have been made by the learned Counsel for respondent Nos. 3 to 5 that the procedure under the Civil Procedure Code does not apply and the Board can have its own procedure as provided in Sec. 92 also requires to be considered. The provisions of Sec. 92 which refer to the procedure and powers of the Board provides that the Board shall not be bound by the

procedure laid down in C.P.C. and shall be guided by principles of natural justice does not suggest that the Board is not required to consider the provisions of the Limitation Act as well as the well-accepted concept of sufficient cause which is the basis or foundation for exercise of discretion. In other words, unless sufficient cause is shown, the discretion vested by virtue of Sec. 5 of the Limitation Act would not be justified. Therefore, any Court or authority is required, or are under an obligation to examine "sufficient cause", before exercising discretion under Sec. 5 of the Limitation Act for condonation of delay. It is only when "sufficient cause" is sufficiently made out justifying the delay, the order could be passed for condonation of delay which will in turn entitle the party to pursue the remedy by way of appeal, revision etc.

22. Therefore, the submission made by learned Counsel Shri Bansal that the procedure of C.P.C. is not applicable and the Board is guided by the principles of natural justice is misconceived, as it has to be considered in the background and context in which such provision has been made to suggest that the technicalities can be avoided. However, condonation of delay is not merely a procedure or technicality as it refers to the statutory provision like the Limitation Act which oblige certain parameters or norms which will have to be fulfilled for exercise of discretion under the Limitation Act. Again, when Sec. 92 of the Trade Marks Act refers to the fact that it shall be guided by the principles of natural justice, meaning thereby, an opportunity to both the sides, whereas in the facts of the case, as pointed out by learned Advocate General and Sr. Counsel Shri Trivedi, the opportunity is not granted to file the reply which could have led to scrutiny about the sufficiency of the cause for condonation of the delay based on the material. Rule 10 of Intellectual Property Appellate Board (Procedure) Rules, 2003 provide for a period of two months' time for filing the reply, and therefore, such haste in disposing of the application for condonation of delay would not be justified.

23. A useful reference can be made to the judgment of the Hon''ble Apex Court in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, referred to by learned Advocate Shri Qureshi for the respondent-Board and the Hon''ble Apex Court has discussed this aspect of sufficient cause at length referring to various judgments. It has been observed and quoted referring to the earlier judgment of the Apex Court reported in the case of Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others, :

".....What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Sec. 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

What colour the expression "sufficient cause" would get in the factual matrix of a

given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

Again, quoting the earlier judgment of the Hon"ble Apex Court reported in B. Madhuri Goud Vs. B. Damodar Reddy, , it is observed:

"(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation."

over and above the other grounds (ix to xii) referred to hereinabove. In this judgment in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, summarizing the findings, the Hon"ble Apex Court has further observed:

"An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective."

It is also referred to and observed:

"The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy.....The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

24. It is in this background, considering the relevant submissions, the procedure and approach while passing the impugned order cannot be approved of and the impugned order deserves to be quashed and set aside.

25. Before parting, it is required to advert to some of the submissions which have been made referring to fraud by the petitioners and improper conduct by the respondent group which both the sides have referred to in detail. However, these are issues which are having the genesis in the family settlement which is again a subject-matter of litigation before the Rajasthan High Court and the

Ahmedabad forum. Though, the submissions have been made regarding assignment of the trade mark, the same are required to be examined closely. It appears that prima facie the issue is not with regard to assignment of the trade mark inasmuch as the proprietor of the trade mark has remained the same firm, Vijay Industries, and it is the reconstitution of the firm which enables one group to use the trade mark which is complained of. Therefore, it would be an issue to be decided whether in a family arrangement between the parties, can the authority be bound and the procedure required under the law has to be followed for justifying joint use of the trade mark which does not appear to have been followed as provided in Sec. 24 of the Act. The provisions of Sec. 37 to 45 of Chapter V of the Act refers to assignment and transmission including restriction on assignment and transmission. This aspect will be considered in background of the submissions based on the family settlement as well as the fact that the firm Vijay Industries is the proprietor of the trade mark and one group, the respondents, have walked out and the trade mark has remained in the name of the firm which is reconstituted and there is no assignment as such. In any view of the matter, these are issues which may have to be considered by the authority or the Court in appropriate proceedings. The same are not required to be discussed and dealt with here. Accordingly, the present petition stands allowed. The impugned order at Annexure-A is hereby quashed and set aside. The respondent-Board is directed to decide the application for condonation of delay filed by the respondent Nos. 3 to 5 along with the appeal challenging the order passed by the Registrar of Trade Marks, Ahmedabad, dated 27-7-2012 within a period of six weeks after providing an opportunity of filing the reply to the petitioners herein and afford an opportunity of hearing to both the sides in accordance with law. Rule is made absolute.