
(2003) 09 DEL CK 0065

In the Delhi High Court

Case No : C.M. (MAIN) No. 457 of 1994

Bayer Aktiengesellschaft

APPELLANT

Vs

Rajasthan Petrosynthetics Ltd. and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Trade and Merchandise Marks Rules, 1959 — Rule 53(2)

Citation : (2004) 1 AD 140 : (2003) 107 DLT 682 : (2004) 73 DRJ 491 : (2004) 28 PTC 317 : (2004) 1 RAJ 164

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Manmohan Singh, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The present petition is directed against the order dated 13.7.1994 passed by the Registrar of Trade Marks. By the said order, applying Sub-rule 2 of Rule 53 of the Trade and Merchandise Marks Rules, 1959, since there was a delay by the petitioner filing the evidence in support of the opposition within the prescribed period of two months, the Registrar of Trade Marks held that the opposition filed by the petitioner being No. DEL-6148 is deemed to have been abandoned.

2. The issue whether the words "shall" in Sub-rule (2) of Rule 53 is mandatory or directory was a subject matter of consideration by Full Bench of this Court. In the decision *Hastimal Jain Trading as Oswal Industries Vs. Registrar of Trade Marks and Another*, .. The Full Bench held that the word "shall" in Sub-rule (2) of Rule 53 has to be read as "directory" and not "mandatory" and as a result thereof the Registrar would be entitled to exercise his power u/s 101 read with Rule 106 of the Trade and Merchandise Marks Rules, 1959 to extend the time under which the evidence in support of the notice of opposition has to be filed.

3. In that view of the matter, impugned order dated 13.7.1994 is quashed. The

Registrar of Trade Marks is directed to proceed with the matter in accordance with law and dispose of opposition No. DEL-6148 on merits.