

(2005) 02 IPAB CK 0014

In the Intellectual Property Appellate Board

Case No : M.P. Nos. 72 to 74/2004 In OA Nos. 87, 88, 89/2004, OA Nos. 87, 88, 89/2004/TM/DEL

Bioherbs Pharma, Through Its Partners

APPELLANT

Vs

Cattles Remedies, Through Its Partners And The Assistant
Registrar, Assistant Registrar Of Trade Marks

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2005) 02 IPAB CK 0014

Hon'ble Judges : S. Jagadeesan, J;Raghubir Singh, J

Bench : Division Bench

Advocate : Pramod Kumar Sharma, Ajay Sahni

Final Decision : Dismissed

Judgement

. Jagadeesan, J

1. The appellant has filed these appeals aggrieved by the order of the Assistant Registrar of Trade Marks, Delhi, dated 13.5.2004, dismissing the three

Review Petitions of the appellant against the consolidated order dated 20.11.2002.

2. The learned counsel for the appellant contended that the order dated 20.11.2002 is an ex-parte order and hence the review petition has been filed to set aside the same since the applications of the first respondent for registration of its trade mark were rejected and the opposition of the appellant was rejected.

3. It is the case of the appellant that in the Review petition, it was represented by counsel and the appellant's counsel was present on 9.3.2004, the date of hearing of the Review petition before the then Deputy Registrar of Trade

Marks. The Deputy Registrar was not available on that day and thereafter the matter was decided by the Assistant Registrar on 23.4.2004 without any notice to the appellant. Hence, the impugned order in the Review petition is also an ex-parte order and as such, the same is liable to be set aside and the Review petition must be restored on file by remitting the same to the Assistant Registrar of Trade Marks for fresh disposal.

4. The learned counsel for the respondent contended that the Review petition was dismissed on the ground that the same is beyond the purview of the limited scope of review and further, the notice was dispatched by the Registry which is clear from the statement of facts in the impugned order and as such, the service has to be presumed. In fact, the learned counsel for the respondent had received the notice of hearing and appeared on 23.4.2004 and argued the matter. Hence, the story of non service of notice on the counsel for the appellant cannot be believed. Apart from that, he also contended that a perusal of the impugned order of the Assistant Registrar of Trade Marks in the Review petition does not call for any interference as the Assistant Registrar dismissed the Review petition stating that the review sought for is to re-hear the matter afresh by setting aside the order dated 20.11.2002 which is not permitted under the law.

5. We have carefully considered the above contentions of both the learned counsel. The record reveals that the order dated 20.11.2002 was passed ex-parte as the learned counsel appearing for the appellant before the then Deputy Registrar had withdrawn from the case. The appellant did not appear in spite of the notice. We have also perused the order dated 20.11.2002. It is not a mere ex-parte order. The Deputy Registrar of Trade Marks had taken into consideration of the evidences in support of the application and the opposition and also other relevant materials. So, it is an order on merits against which an appeal lies.

6. The appellant has sought review of the said order dated 20.11.2002 by making earlier allegations against the then Deputy Registrar and seeking a total re- hearing of the matter afresh which, in our view, cannot be done under the guise of review. We draw support from the judgment of the Supreme Court in the case of Parsion Devi and Ors. v. Sunita Devi and Ors. reported in 1998 (1) CTC 25 1997 (8) SCC 715 wherein held as follows:-

9. Under Order 47, Rule 1, C.P.C. judgement may be open to review inter alia if

there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power to review under Order 47, Rule 1, C .P.C. In exercise of the jurisdiction under Order 47, Rule 1, C.P.C. it is not permissible for an erroneous decision to be ""reheard and corrected"". A review petition, it must be remembered has a limited purpose and cannot be allowed to be ""an appeal in disguise.

7. The learned judges of the apex court placed reliance on the earlier judgment in *Thungabhadra Industries Ltd. v. The Government of Andhra*

Pradesh, 1985 (5) SCR 174 at 186 and also the other judgment in *Smt. Meera Bhanjia v. Smt. Nirmala Kumari Choudhury*, 1985 (1) SCC 170 quoting

with approval a passage from *Abhiram Taleswar Sharma v. Abhiram Pishak Sharma and Ors.* - 1979 (4) SCC 389. On the above principles, it is

clear that the review is permitted only to correct an error apparent on the face of the record. Even if such an error is to be found out by a process of reasoning, then the review cannot be made.

8. A perusal of the order of the Assistant Registrar in the Review petition simply reflects the principles laid down by the learned judges of the

Supreme Court stating that by way of review an error apparent on the face of the record alone can be corrected and even if any error is to be noticed

by going into the details of the reasoning, that is not permissible. When the impugned order of the Assistant Registrar dismissing the Review

applications of the appellant is in conformity with the judgments of the Supreme Court, we do not think there is any need to interfere with the same.

Even if the appellant had been given an opportunity of hearing in the review application, it will not change the result. In such circumstances, we are of

the view that there is no need to set aside the impugned order of the Assistant Registrar in all the appeals and remit the matter for fresh disposal.

9. Hence, we do not find any merit in the appeals and accordingly the appeals are dismissed without any costs.

10. The M.Ps are only seeking stay of the operation of the impugned order in the appeal. Since the appeals are dismissed, the M.Ps are also dismissed.