

(2015) 10 IPAB CK 0001

In the Intellectual Property Appellate Board

Case No : S.R. No. 340/2014/TM/MUM And Order 211/2015

Chandraprakash Shivhare

APPELLANT

Vs

Indian Express Limited And Ors

RESPONDENT

Date of Decision : 26-10-2015

Acts Referred:

Intellectual Property Appellate Board Procedure Rules, 2003 — Rule 7

Citation : (2015) 10 IPAB CK 0001

Hon'ble Judges : K.N. Basha, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Advocate : Arun C. Mohan

Final Decision : Disposed Of

Judgement

K.N. Basha, J

1. This matter is posted today on the basis of the receipt of the order of the Hon'ble High Court of Mumbai dated 1.10.2015 in Suit No. 2854 of 2010. The Rectification petition was filed by the applicant in this matter in respect of the impugned trade mark No. 1822066 in Class 16 is now pending before the Intellectual Property Appellate Board, Chennai only at the SR stage and the ORA is yet to be numbered.

2 . Mr. Arun C. Mohan, the learned counsel for the first respondent in this matter is present today.

3 . It is seen that the ORA is not yet numbered and the Registry pointed out certain defects and the said defects have not been rectified.

4 . The reading of the order of the Hon'ble High Court of Bombay dated 1.10.2015 reflects that the defendant in the suit No. 2854 of 2010, who is the applicant herein, and the ORA is under SR stage and the applicant as the defendant gave unconditional undertaking before the Hon'ble High Court of Bombay and it is relevant to extract the following portion of the order dated

1.10.2015 as hereunder:

"6. In fairness Mr. Soni accepts this today. He makes a statement on instructions from the Defendant that both the application for registration and the application for rectification will be unconditionally withdrawn by the Defendant and gives an undertaking to this Court to do so forthwith.

7 . On my directions, the Defendant has affirmed a handwritten Affidavit in Court today. This has been written out in Court, and has been affirmed before the Associate of this Court. That Affidavit is taken on file. Both sides may take a photocopy of it from Registry to complete their records. The statements made on behalf of the Defendant both by Mr. Soni and in this Affidavit are accepted as undertakings to the Court.

8 . In order to ensure that there is no ambiguity, the Registry is directed to immediately communicate authenticated copies of this order to the Intellectual Property Appellate board, Guna Complex Annexe-I, 2nd Floor, 443, Anna Salai, Teynampet, Chennai - 18, referring IPAB Case Sr. No. 340/2014/TM/MUM as also to the Registrar of Trade Marks, Mumbai - 400 037 referring Trade Marks Application No. 2857054. The IPAB is requested to pass an order immediately on receipt of an authenticated copy of this order dismissing the rectification application noted above as withdrawn irrespective of whether or not an application for withdrawal is or is not made by the present Respondent. Similarly, the Registrar of Trade Marks, Mumbai is directed to pass the necessary directions in trade mark Application No. 2857054 showing it as withdrawn forthwith. Both orders should be unconditional and unqualified."

5. The above said contents of the order dated 1.10.2015 makes it crystal clear that the Hon'ble Bombay High Court has requested the Intellectual Property Appellate Board, Chennai to pass an order immediately on receipt of an authenticated copy of the said order dismissing the said Rectification Application as withdrawn irrespective of whether or not an application for withdrawal is or is not made by the applicant who is the defendant in the said suit before the Hon'ble High Court of Bombay.

6. However, it is needless to state that the applicant themselves have not shown any interest in pursuing the matter by rectifying the defects pointed out by the Registry of IPAB through its letter dated 13.04.2015 and dispatched as early as on 15.04.2015. It is seen that the Registry requested the applicant to rectify the defects within 15 days from the date of receipt of notice dated 13th April, 2015 as per Rule 7 of Intellectual Property Appellate Board Procedure Rules, 2003 and it is also informed, on their failure to do so, the Application will be treated as "Abandoned". It is pertinent to note that they have not rectified the defects viz.,

"(1) Copy of Trade Marks Journal Advertisement/Registration certificate of the impugned trade mark has to be filed; and

(2) By filing Form-3 for extension of time along with prescribed fees for the

period of delay in rectifying the Defects has to be filed."

7 . Therefore in view of the above said factors; we are constrained to treat the application, which is pending in SR. No. 340/2014/TM/MUM as "Abandoned". Accordingly, this application is hereby closed. No costs.