
(2005) 03 DEL CK 0019
In the Delhi High Court
Case No : OCIA No's. 5, 6 and 7 of 2000

Chinar Trust

APPELLANT

Vs

Usha Rectifier Corporation

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Evidence Act, 1872 — Section 114
Trade Marks Rules, 2002 — Rule 53, 53(2)

Citation : (2005) 30 PTC 441

Hon'ble Judges : B.A. Khan, J;Anil Kumar, J

Bench : Division Bench

Advocate : Praveen Anand, for the Appellant;

Final Decision : Allowed

Judgement

B.A. Khan, J.—All these appeals arises out of a common order dated 24.4.2000 allowing the CM (M) Nos. 252, 253 & 254/1990 filed by respondent holding that he is entitled to extension of time in submitting evidence in the opposition filed by him against Appellant's application for registration of Trademark (Usha Shriram) under number 427541 in Class 7.

2. Appellant has filed application for registration of the Trademark (Usha Shriram) under numbers 427541, 427533 and 427532 in Classes 7, 9 and 11 and respondent filed notice of opposition against these. Respondent was required to file evidence in support of its opposition under Rule 53 of Trademark Rules, but is said to have dragged its feet by filing three times requests on Form TM 56 seeking extension of time of file evidence on 4.10.1988, 28.11.1988 and 30.1.1989. After availing of these extension, this respondent again sought extension of time on 21.3.1989 by two months more up to 6.6.1989 on the ground that it was still in the process of collecting evidence. The Registrar is said to have considered this request and granted one month's time instead of two months which was allegedly intimated to respondent's Advocate through letter dated 5.4.1989. Respondent did not avail it and did not file evidence and

Registrar by order dated 6.5.1989 held the opposition of the respondent as deemed abandoned under Rule 53(2) of the Trademark Rules.

3. The respondent sought review of this order on 30.5.1989 which was rejected by order 15.9.1989. The respondent then filed Writ Petitions CM(M) No. 252, 253 and 254/1990. The learned Single Judge allowed these petitions holding that as letter dated 5.4.1989 of the Registrar was not served on the respondent its evidence could not be deemed abandoned. The learned Single Judge accordingly granted this respondent extension of time and allowed it to submit its evidence and directed Registrar to adjudicate upon the matter under law by impugned order date 24.4.2000.

4. The present appeal is directed against this order and the case of the Appellant is that learned Single Judge instead of determining whether Registrar had justifiably treated the respondent's opposition as having been abandoned had returned a finding of fact that a Registrar's letter dated 5.4.1989 granting one month extension which was to be served on Respondent's Advocate was not served on the respondent. It is submitted that even if determination revolves around this letter, it should have been presumed to be served on Respondent's Advocate which presumption was available u/s 114 of the Evidence Act and rebuttable also. But Respondent had not taken any steps to do so and, Therefore, it could not be held by the Writ Court that the letter in question was not served on the Respondent's Advocate. Support for this is drawn from the judgment of the Patna High Court in Lalit Mohan Sharma v. Dineshwar Prasad Singh, AIR 1978 Patna. 256, the judgment of this Court in O.P. Bahal Vs. B.A.K. Sharoff, and some other judgments from various High Court all laying down that presumption of service u/s 114 of the Evidence Act was not available for registered letters only but also for letters dispatched under the ordinary post also.

5. It goes without saying that the presumption u/s 114 of the Evidence Act could not be confined to Registered letters only and was extendable to the dispatch or ordinary letters also, which was however rebuttable. It all, however, depended on the facts and circumstances of the case. Where it is shown that the letter was dispatched through the post and was properly stamped and that there was nothing to show that it was not received by the addressee, it should be presumed to have reached the addressee. A generalised or bald denial would not be enough to demolish the presumption of service raised u/s 114.

6. In the present case, it had been recorded by the Registrar that the letter in question was dispatched to the correct address of Respondent's Advocate and was affixed a stamp of 60 paise and was posted. All this raised a presumption that this letter was received by the Respondent's Advocate. This presumption could have been rebutted by the respondent by setting up the Advocate's version through any evidence which it had failed to do. As such there was nothing before the Writ Court to suggest that this letter had not reached the Respondent's Advocate. On the contrary, the Court seems to have overlooked this aspect and had returned a finding that the letter was not served on the

Respondent when it dispatched to Respondent's Advocate. It was not the case of the Registrar that the letter was dispatched to Respondent's address and, Therefore, whether it had reached this respondent was inconsequential. That this letter was sent to Respondent's Advocate's address is not denied. The letter, in the absence of rebuttal must be presumed to have served on the Advocate. It also seems to have escaped the notice of the learned Judge that the issue before him was whether the Registrar had justifiably invoked the deeming provision of Rule 53(2) and held that Respondents opposition was deemed to be abandoned. The learned Judge had somehow failed to advert to this aspect at all. The ambit and implication of Rule 53 (2) has not been dealt with at all in the impugned order.

7. All this leaves us with no option but to hold that the Writ Court had fallen in error on both counts and had wrongly returned the finding that the disputed letter was not served on the Respondent.

8. We are also informed that Appellants Trade Mark stands already registered and the Respondent had also filed cancellation proceedings against it.

9. These Appeals are accordingly allowed and the impugned Writ Court order dated 24.4.2000 is set aside.