

(2011) 09 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : M.P. No. 171/2008 And ORA/105/2007/TM/DEL

Costa And Company Private Limited

APPELLANT

Vs

Costa Limited

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Trade Marks Act, 1999 — Section 57

Citation : (2011) 09 IPAB CK 0002

Hon'ble Judges : Prabha Sridevan, J;S. Usha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prabha Sridevan, J

1 . This is a case where two parties have filed rectification application against each other, one filed by the Petitioner herein Costa and Company Pvt.

Ltd., which is ORA/105/2007/TM/DEL and the other is filed by the Respondent herein before the Trade Marks Registry, Mumbai which is numbered

as BOM-183681. The present petition M.P. No. 171/2008 is filed seeking a direction to the Trade Marks Registry, Mumbai to transfer the papers

pertaining to RECT.BOM-183681 to the Intellectual Property Appellate Board and for a consolidated hearing of the above two matters.

2 . The Learned Counsel for the Petitioner who is the Respondent herein referred to three decisions. He submitted that where the parties are the

same, the issues are same and the evidence to be led in is the same, it was desirable that they are heard together. The Learned Counsel submitted that

in fact, if any of the parties stands to lose, it is the Petitioner herein (i.e. the Respondent and not the Appellant).

3. The Learned Counsel Mr. A.A. Mohan submitted that it is actually the Registrar of Trade Marks who has the power to transfer the matter to the

Intellectual Property Appellate Board and there is nothing in the Act which gives such powers to the Board.

4 . Rectification application can be filed under Section 57 of the Trade Marks Act, 1999 either before the Trade Marks Registry or the Board. In the

present case, the Petitioner herein had filed the application before the Board. In fact, what he seeks is for both the rectification applications to be

treated as if they have been filed before this Board.

5 . When all the conditions mentioned in the decision of the Hon'ble Supreme Court exist in this case, we see no reason why we should not grant the

prayer.

6 . Accordingly, this Miscellaneous Petition is allowed. Rectification Application No. BOM-183681 filed before the Registrar of Trade Marks, Mumbai

shall be transferred to the Intellectual Property Appellate Board from the stage at which it now stands. We understand that the applicant herein has

filed the counter-statement. Instead of one matter being heard in Mumbai and the other in Delhi, we direct that both the matters i.e.

ORA/105/2007/TM/DEL and the other matter which shall be numbered after it is transferred from the Trade Marks Registry, Mumbai will be listed

together at the Circuit Bench Sitting at Delhi. The Registry shall intimate the date of hearing to both parties after it is fixed.