

(2009) 09 IPAB CK 0006

In the Intellectual Property Appellate Board

Case No : COD No. 4/2009 In S.R. No. 222/2009/TM/IPAB

Elan Corporation PLC

APPELLANT

Vs

Elan Pharma (India) Pvt. Ltd. Anr

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Code Of Civil Procedure, 1908 — Section 5, Order 22 Rule 9
Trade Marks Act, 1999 — Section 91, 91(1)

Citation : (2010) 43 PTC 458 (IPAB)

Hon'ble Judges : S. Usha, J; Syed Obaidur Rahaman, Technical Member

Bench : Division Bench

Advocate : Anupam Pandey, S.C. Chadha

Final Decision : Allowed

Judgement

S. Usha, J

1. The Appellant has filed an appeal under Section 91 of the Trade Marks Act, 1999 (hereinafter referred to as the Act) against the order of the

Deputy Registrar of Trade Marks dated 23rd February, 2009 refusing registration of application No. 1084176 in class 5 and allowing the opposition

No. DEL-164807. The appeal has been filed beyond the limitation time provided under Sub-section 1 of Section 91 of the Act. The present application

is to condone the delay of 16 days.

2. The present application to condone the delay in filing the appeal is on the ground that the opposition proceedings were handled by one another

counsel and now the present counsel has been engaged to file the appeal and the present counsel on receipt of the entire records from erstwhile

counsel had to study the file which, took some time and that there was a delay. Further the clients being placed at Ireland, necessary documents were

to be signed for engaging a new counsel and there was again a delay.

3. In reply to this application, the counsel for the Respondent No. 1 stated that non-compliance of the law and rules laid down would prejudice the rights. The application to condonation should not be allowed as no satisfactory or full proof or explanation given for the delay. The appeal be rejected as time barred.

4 . We have heard Shri Anupam Pandey counsel for the Appellant and Shri S.C. Chadha learned Counsel for the Respondent No. 1 in the Circuit

Bench Sitting at New Delhi on 28th August, 2009.

5 . The learned Counsel for the Appellant stated that the reasons mentioned in the application were true and that the delay was neither willful nor wanton but for the reason stated above.

6 . On the contrary the counsel for the Respondent No. 1 contended that the delay was not 16 days and it was 22 days. He further submitted that as has been held by the Apex Court each days delay has got to be explained whereas in this case it has not been done. The reasons given are also not valid.

7 . In rejoinder the counsel for the Appellant stated that mere technicalities should not be a base in such application.

8 . We have heard and considered the arguments of both the counsels. In an application of such nature, we will have to consider as to the net result of the main matter. When the stakes involved is high, the merits of the case are to be looked into. It may be worthwhile to quote the following principles

laid down by the Apex Court in the case of Ramnath Sao @ Ramnath Sahu and Ors. v. Govardhan Sao and Ors., 2002(3) SCC 195:

11. Thus it becomes plain that the expression ""sufficient cause"" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any

other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is

imputable to a party. In a particular case where explanation furnished would constitute ""sufficient cause"" or not will be Dependant upon facts of each

case. There can not be straightjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is

clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over

jubilant of disposal drive. Acceptance of explanation, furnished should be the rule and refusal and exception more so when no negligence or inaction

or want of bonafide can be imputed to the defaulting party. On the other hand, while considering the matter the court should not lose sight of the fact

that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning the

delay in a routine like manner. However, by taking a pedantic and hypotechnical view of the matter the explanation furnished should not be rejected

when stakes are high and/or arguable point and facts and law are involved in the case, causing enormous loss and irreparable injury to the party

against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While

considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

9. We do not find any negligence or deliberate delay and the reasons shown are also reasonable. We also are of the view that the number of delay is

not longer period. We therefore are of the opinion that the delay can be condoned.

10 . In view of the above, the application to condone the delay is allowed. The registry is directed to number the appeal if in order. No order as to

costs.