
(2009) 05 IPAB CK 0013

In the Intellectual Property Appellate Board

H.S. Kishori Lal

APPELLANT

Vs

Ashok Kumar Khatri And Ors

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 22 Rule 3
Intellectual Property Appellate Board (Procedure) Rules, 2003 — Rule 24
Trade Marks Act, 1999 — Section 47, 57, 125

Citation : (2009) 05 IPAB CK 0013

Hon'ble Judges : Z.S. Negi, J;S. Usha, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Usha, Technical Member

1. The original rectification application has been filed for removal of the trade mark 'WAGNER' registered under No. 693776 in class 18 under the provisions of Section 47/57/125 of the Trade Marks Act, 1999.

2. The applicant herein filed a miscellaneous petition to bring on record the change in the constitution of the applicant firm and to continue the application in the name of the applicant firm.

3. The application for registration was filed by the partnership firm consisting of two partners, namely Shri Ramesh Kumar Chawla and Ms. Atika

Chawla/Dhawan. Subsequent to the filing of the rectification application on 01.09.07, the partner Shri Ramesh Kumar Chawla died on 28.06.2008.

The constitution of the firm had undergone a change on account of demise of Shri Ramesh Kumar Chawla. Mrs. Santosh Chawla W/o Shri Ramesh

Kumar Chawla was brought into the firm as a partner with effect from 01.07.2008 by a deed of partnership dated 31.07.2008. The other legal heirs

had given their consent for the change in the constitution by including Mrs. Santosh Chawla as one of the partner in the firm.

4 . The respondent filed their counter to the miscellaneous petition denying all the material averments made in the M.P. The respondent No. 1 and 2

stated that there was no written deed of partnership and if the presumption is that the firm stood dissolved on the death of one partner, the application

itself is not maintainable. Shri Ramesh Kumar Chawla died on 28.06.08 and the new partnership was entered on 31.07.2008 with effect from

01.07.2008, then there was no partnership existing between 26.06.08 and 01.07.08, and hence this application is liable to be dismissed on this ground

alone.

5. As the new partnership firm is a newly constituted firm, it is not entitled to pursue the present application and is liable to be dismissed. No

documentary evidence filed to corroborate the averments made in the application. The miscellaneous petition, may therefore be dismissed with

exemplary costs.

6 . Both the counsel reiterated the contents of the respective pleadings in the arguments. We have heard both the counsel in the Circuit Bench Sitting

at New Delhi on 17.03.2009. Learned Counsel Shri Amarjeet Singh appeared for the applicant and learned Counsel Shri Siddhartha Bambhe appeared

for R1 & R2.

7 . The application has been instituted in the name of the firm consisting of two partners and now there has been a change in the constitution due to

death of one partner. The change has to be brought on record and the application to be continued was the contention of the counsel for the applicant,

which, in our opinion is a valid and meritorious one. Even though the counsel has filed the application under Order 22 Rule 3 read with Section 151

CPC, we are not going into the same as this Appellate Board is not bound by the Code of Civil Procedure. But in the interest of justice, we will also

have to consider the fact which will not affect the legal rights of the parties. Rule 24 of the Intellectual Property Appellate Board (Procedure) Rules,

2003- Continuation of proceedings after the death of a party, merger, assignment, acquisition or transmission, provides that on the death of a party or

by merger, assignment, acquisition or transmission if a new party becomes entitled for continuation of the proceedings, the proceeding would be

continued subject to filing a request with evidence in support thereof. In the instant case one of the partner had died and a new party has been brought in for continuation. In such case, we are also of the view that there is no substitution or addition which is likely to cause any loss to the respondents or is likely to materially alter the application for rectification which will affect the interest of the respondents. It is only to bring on record the change in the constitution. We find no merits in the submission of the respondent Nos. 1 and 2 that the change has constituted a new firm and that will have no legal rights to continue the application for rectification. The application has been made by the firm and only change in the partner is being brought on record. We have no hesitation in allowing the miscellaneous petition.

8 . In view of the above observations, we allow the miscellaneous petition No. 212/08. The main matter shall be listed in the usual course.