
(2013) 08 BOM CK 0169
In the Bombay High Court
Case No : Writ Petition No. 5173 of 2012

Intelgain Technologies Pvt. Ltd.

APPELLANT

Vs

Regional Director, Western Region, Ministries of Corporate
Affairs and Another

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Companies Act, 1956 — Section 22, 22(1), 22(1)(2), 22(1)(b), 22(1)(i)
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 5 ABR 1100 : (2014) 1 ALLMR 87

Hon'ble Judges : V.M. Kanade, J;K.R. Shriram, J

Bench : Division Bench

Advocate : Ritesh Khatri instructed by M/s. B.K. Barve and Co, for the Appellant; Simil Purhohit, Gauraj Shah and Mr. R. Gajria instructed by Gajria and Co. for Respondent No. 2 and Ms. J.N. Pardhi, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—By this Petition which is filed under Article 226 of the Constitution of India, Petitioner is seeking an appropriate writ, order and direction for quashing and setting aside the order dated 30/03/2012 passed by Respondent No. 1 and, secondly, for an appropriate writ, order and direction, directing Respondents not to charge, levy any fine and or penalty as imposed in the impugned order. Brief facts are as under:-

2. Petitioner is a Private Limited Company duly incorporated under the Provisions of the Indian Companies Act, 1956. Respondent No. 2 is a Company which is registered in California in United States of America and also in India under the name and style of INTELGAIN TECHNOLOGIES Pvt. Ltd. Petitioner - Company received a legal notice dated 29/9/2010 sent by Respondent No. 2, alleging that there was an infringement of their trade mark "INTEL" by the Petitioner. By the said notice, Petitioner was asked to refrain from using the mark "INTEL" as a part of their corporate name. In the said notice, it was stated that the world-wide

sales turnover of Respondent No. 2 for the year 2008 was in excess of \$37.6 billion and that Respondent No. 2 had been exporting goods to India as early as and as far back as 1972. Thirdly, it was stated that the INTEL brand had been consistently ranked among the first 10 brands by leading independent publications. Fourthly, it was submitted that Respondent No. 2 is the proprietor of trade mark "INTEL" under various Registration Numbers. It was further stated that Respondent No. 2 had recently come to know that the Petitioner had been using the trade name "INTELGAIN TECHNOLOGIES Pvt. Ltd" which contains the mark "INTEL" of Respondent No. 2 and it formed a predominant part of the said name. It was contended that it amounted to trade mark infringement, passing off and dilution of trade marks. A reply was given by the Petitioner on 7/10/2010 to the said notice.

3. In the meantime, Respondent No. 2 and the Petitioner tried to amicably resolve the dispute and correspondence between the parties was exchanged. During the pendency of the said proceedings of reconciliation and amicable settlement, Respondent No. 2 filed an application u/s 22 of the Companies Act on 15/11/2011 in the office of Respondent No. 1 who issued notice to the Petitioner on 02/02/2012 to show cause as to why direction for change of name should not be issued.

4. Petitioner appeared before Respondent No. 1 through its Managing Director on 15/3/2012 and filed a detailed reply. It was stated in the reply that Respondent No. 2 had initiated the dispute by sending a legal notice on 29/9/2010 for infringement of trade mark and thereafter the application was filed by Respondent No. 2 in the Office of Respondent No. 1.

5. Thereafter, Respondent No. 1 was pleased to pass the order dated 30/9/2012 which has been challenged by the Petitioner on various grounds.

6. Firstly, it is submitted by the learned Counsel appearing on behalf of the Petitioner that Respondent No. 1 had not taken into consideration the period of limitation prescribed for making an application u/s 22. He submitted that powers vested could be invoked within 12 months. He then submitted although section 22 expressly provides for institution and disposal of the application, no application could be made after the period of five years and it could not be decided under the provisions of clause (b) of Section 22(1) of the said Act. He then submitted that the impugned order entertaining the application made u/s 22 of the Companies Act by Respondent No. 1 is bad in law and suffers from non-application of mind. It is submitted that the said application ought to have been dismissed at the threshold and Respondent No. 2 should have been informed that though the said application was validly filed under limitation, Respondent No. 1 did not have jurisdiction to entertain it after expiry of 12 months. He relied upon the Judgment of Division Bench of this Court in MRC Logistics Private Limited Vs. Regional Director Western Region, Ministry of Corporate Affairs and MRC Logistics (India) Pvt. Ltd., . He also relied upon the judgment of Karnataka High Court in Technova Tapes (India) Private Limited Vs. Regional Director, Ministry of

Company Affairs and Technova Imaging Systems Private Limited, Laxmi Mills Estate, . He also relied upon the judgment of Calcutta High Court in Sen and Pandit Electronics Pvt. Ltd. vs. Union of India and Others 2003 CC Vol. 115, page 299.

7. On the other hand, the learned Counsel for Respondent No. 2 submitted that Respondent No. 1 had properly construed the provisions of section 22 and had properly exercised the jurisdiction vested in him under the said section and, therefore, he submitted that this Court may not interfere with the said order while exercising its writ jurisdiction under Article 226 and 227 of the Constitution of India.

8. Before taking into consideration the rival submissions, it would be relevant to take into consideration the provisions of section 22 of the said Act, which reads as under:-

22. Rectification of name of company.- (1) [If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,-

(i) in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous companies law, the first-mentioned company, or

(ii) on an application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade mark of such proprietor under the Trade Marks Act, 1999, such company,-]

(a) may, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name; and

(b) shall, if the Central Government so directs within twelve months of its first registration or registration by its new name, as the case may be, or within twelve months of the commencement of this Act, whichever is later, by ordinary resolution and with the previous approval of the Central Government signified in writing change its name or new name within a period of three months from the date of the direction or such longer period as the Central Government may think fit to allow:

[Provided that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to notice of registration of the company shall be considered by the Central Government.]

(2) If a company makes default in complying with any direction given under clause (b) of sub-section (1), the company, and every officer who is in default, shall be punishable with fine which may extend to [one thousand rupees] for every day during which the default continues.

9. By virtue of the said provision, power is given to the Central Government to

give a direction to the Company which has been registered in a particular name to change its name if it comes to the conclusion that the name in which it is registered is identical with or too nearly resembles the name of a company which is in existence and has been previously registered. The Central Government can also give a similar direction if an application is made by a registered proprietor of a trade mark, making a similar grievance. Procedure for filing an application and also period of limitation is prescribed under sub-clause 22(1)(b). The consequences of not following the direction given by the Central Government is laid down u/s 22(2).

10. Secondly, it has to be noted that section 22(1)(b) was amended and proviso was added by virtue of amendment to the Companies Act. The said sub-clause (b) is added in two parts. The first part prescribes the limitation for giving a direction if the Central Government suo motu decides to take cognizance and the period which is prescribed in such a case is within 12 months from the commencement of the Act, whereas the second part of the proviso speaks about limitation which is prescribed when an application is made by registered proprietor of a trade mark in which case limitation which is prescribed is five years. If a plain interpretation is given to sub-clause 22(1)(i)(b), it is abundantly clear that the Central Government may suo motu give direction to a company to change its name provided an application is made within 12 months of the first registration of the Company. However, in respect of sub-clause (ii) of section 22(1) if an application is made by a registered proprietor then, in that case, the Central Government can consider it if it is made within five years, if it notices the registration of the Company. The period of limitation, therefore, is 12 months when the Central Governments suo motu gives direction and is five years when application is made by a registered proprietor of a trade mark. The reason is obvious. It is possible that the registered proprietor of a trade mark who has registered its trade mark in foreign country may not be aware immediately of registration or registration of the new name which resembles or is identical to the name of the Company in question and, therefore, some more latitude has been given to the registered proprietor of a trade mark and if he files an application within five years, the Central Government has to consider the said application. The submission made by the learned Counsel appearing on behalf of the Petitioner is, therefore, without any substance. It is an admitted position that the application which was filed by Respondent No. 2 was within five years from the registration of Petitioner-Company. In our view, therefore, Respondent No. 1 was justified in entertaining the said application and the contention of the Petitioner that it was not filed within a period of limitation of 12 months cannot be accepted.

11. Reliance has been placed by the learned Counsel appearing on behalf of the Petitioner on the judgment of this Court in MRC Logistics Private Limited Vs. Regional Director Western Region, Ministry of Corporate Affairs and MRC Logistics (India) Pvt. Ltd., . In our view, ratio of the said judgment is not applicable to the facts of the present case which can be seen from para 13 of the said judgment. In the said paragraph, it is expressly stated that section 22(1)(i)(2) is not

attracted in the facts of the said case. Para 13 of the said judgment reads as under:-

13. The period of 12 months is, therefore, essence of invocation of powers in terms of Section 22 vested in the appropriate Government. As far as Section 22(1)(i)(2) is concerned, said provisions are not attracted in the facts of the present case.

It has to be noted that though the reference is made to section 22(1)(i)(2), it appears that Division Bench, in fact, had made reference to section 22(1)(ii) which is evident from the discussion in para 11. Para 11 reads as under:-

11.But another additional restriction that is imposed by proviso is that no application u/s 22(1)(2) can be made by the registered proprietor of a trade mark after 5 years of having notice of the registration of the company and the Government will not consider such an application on expiry of such period. As already noticed, in the present case none of the companies i.e. previously registered company or the subsequently registered company had registered trade mark. However, it has been averred by the respondent No. 2 that MRC Transolutions Private Limited previously known as Maharashtra Road Carrier Limited which was incorporated after fulfilling all the requirements and obtaining NOC from the flagship company had applied for trade mark in the year 1998 with the word "MRC" and its logo claiming the usage for more than 10 years. The company subsequently applied for registration of the logo under the Trade Marks Act, 1999 in the year 2002 claiming usage from 1985. However, the application in the name of the respondent No. 2 company was made in the year 2006. It was pleaded before the authorities by the respondent No. 2 that MRC Transolutions and its predecessors are prior adaptors, owners and users of the trade mark "MRC" in different forms since 1985.

As already noticed, in the said case, none of the companies which was previously registered company or subsequently registered company had registered trade mark. It is, therefore, apparent that Division Bench of this Court had taken into consideration the powers of the Central Government when it exercises its suo motu discretion u/s 22(1)(i). In such a case, limitation period is 12 months. Ratio of the said judgment, therefore, will not apply to the facts of the present case.

12. Reliance has also been placed by the learned Counsel appearing on behalf of the Petitioner on the judgment of the Karnataka High Court in Technova Tapes (India) Private Limited Vs. Regional Director, Ministry of Company Affairs and Technova Imaging Systems Private Limited, Laxmi Mills Estate, . In the said case, Petitioner-Company changed its name and registered the Company under the name "Technova" in the year 1995. The second Respondent had also changed its name in 1993 but the word "Technova" had been and was part of its corporate identity since 1979. The second Respondent filed an application u/s 22 of the Companies Act, 1956 on January 6, 2004 seeking a direction to the Petitioner for deleting the word "Technova" or any variant thereof from its name. The Regional

Director accordingly issued the said direction to the Petitioner. This was challenged before the Karnataka High Court and it was urged that the Petitioner had been using the name for almost nine years and the period of limitation prescribed u/s 22 of the 1956 Act prior to the amendment in the year 2000 having expired, a subsequent amendment enlarging the period of limitation could not revive the rights which had already become barred by limitation. The Karnataka High Court, in the facts of the said case, therefore, held that second Respondent's remedy u/s 22 of the 1956 Act had become barred under the unamended provision and it could not as a proprietor of a registered trade mark, claim an extended period of limitation for the purpose of the Companies Act, 1956. In our view, again, the facts of the said case were entirely different and, therefore, ratio of the said judgment will not apply to the facts of the present case. We are also unable to agree with the observations made by the learned Single Judge in the said judgment, which read as under:-

The language of the Section is certainly found wanting in clarity. If the section is construed, on a plain reading, that the Central Government or such other competent authority is empowered to direct rectification of the name of a company which is identical with or resembles the name of a company which is already in existence, within twelve months of the registration of such company. The proviso affording a registered proprietor of a trade mark five years time, after coming to its notice of a registered company, with an identical or nearly resembling its own registered trade mark, while there is no corresponding enabling power or jurisdiction afforded to entertain an application by the competent authority or the Central Government in the section, it is only to be implied, this is an apparent incongruity. But in order to avoid rendering the provision nugatory, where it seeks to protect the interest of a registered proprietor of a trade mark, the section would necessarily have to be given the interpretation suggested by respondent No. 2 herein, namely, that under the unamended section, the limitation of one year was prescribed for applications by a registered company. The proviso however makes a separate provision for the new category of applicants namely, the holders of registered trade marks and for such applicants, the period of five years would run from the date when the applicant who is the registered trade mark holder came to know of the existence of the company with a similar name and the limitation of one year for the authority to exercise the power would necessarily have to be read as having been enabled to accommodate the applications filed within the period contemplated under the proviso.

Firstly, the said question did not fall for consideration before the learned Single Judge since the only issue involved was whether the unamended provision of section 22 would apply or amended provisions would apply and having held that proprietor of registered trade mark could not claim the extended period of limitation, it was not necessary to deal with the period of five years which was provided u/s 22(1)(b). Even otherwise, we have observed the reason for giving five years' time for registered proprietor of a trade mark. In our view, therefore,

there is no incongruity as suggested by the learned Single Judge of Karnataka High Court nor do we agree with the observations made by the learned Single Judge in respect of the said amended proviso to section 22(1)(b). Ratio of the judgment of Calcutta High Court in *Sen and Pandit Electronics Pvt. Ltd. vs. Union of India and Others* 2003 CC Vol. 115, page 299 also will not apply to the facts of the present case and, therefore, we do not propose to deal with the said judgment on which reliance has been placed by the learned Counsel appearing on behalf of the Petitioner.

13. In our view, there is no infirmity or illegality committed by Respondent No. 1 in giving direction to the Petitioner to change its name. We are therefore not interfering with the direction given by Respondent No. 1 in the impugned order while exercising our writ jurisdiction under Articles 226 & 227 of the Constitution of India. Petition is dismissed in limine.