
(2003) 02 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Petition No. 850 of 2003 and CM. 1306 of 2003

Kamlesh Thukral

APPELLANT

Vs

Central Government and Others

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Citation : (2003) 68 DRJ 120 : (2003) 26 PTC 423 : (2003) 2 RAJ 371

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Sahilen Kr. Bhatia and Dheeraj Bhatia, for the Appellant; Meera Bhatia and Rajesh Majumdar, for the Respondent

Judgement

A.K. Sikri, J.—Twelve applications were advertised in the Trade Marks Journal dated 1st August, 2002 inviting oppositions. Last date for filing of opposition was 1st December, 2002. Petitioner who is registered owner of trade mark "Childcare" dispatched 12 oppositions by "Speed Post" on 25th November, 2002 to the Office of Trade Marks Registry. It is also alleged that Petitioner sent separate letter by registered. AD. Post informing the Registrar of Trade Marks about dispatch of such oppositions. It is further stated that these oppositions were received by the Trade Marks Office on 26th November, 2002. However, on 9th January, 2003 petitioner received back eleven oppositions from the Office of Trade Mark Registry, Mumbai Along with covering letter with the remarks "Request of TN-5 is time barred". On 10th January, 2003 twelfth opposition was also received back with same remark. Since, it is the case of the petitioner that oppositions sent by it were duly delivered in the Trade Marks Office on 26th November, 2002 and the action of the respondent in returning back the said oppositions as time barred is illegal and hence present Writ Petition was filed.

2. The respondents have filed their counter affidavit explaining the position in the following manner :-

"It is submitted that according to intimation received by the Administrative

Officer, the letter of opposition by the petitioner was purportedly received on 11.12.2002 and the mail was opened on 12.12.2002 and was entered in the diary on 12.12.2002. Oppositions were thereby returned on 6.1.2003 & 10.1.2003 as being time barred.

3. However, in compliance of the order of this Hon"ble Court, a detailed enquiry was conducted and it was discovered that the Notice of Opposition was actually received on 26.11.2002 whereas all the mails received on a date are to be entered in the diary on the same date, the oppositions received on 26.11.2002 were not entered in the diary on the same day in the Trade Marks Registry but was entered in the diary only on 11.12.2002 by the receiving clerk due to inadvertence. Reasons for delay in such recording in the diary was being an oversight by the concerned clerk."

4. Since it is accepted now that the notice of oppositions were in fact received on 26th November, 2002 and respondents would consider these oppositions before dealing with the applications received by it which were advertised in the Trade Marks Journal, the grievance of the petitioner stands satisfied. In view of this statement made in the affidavit the petitioner is permitted to sent back the oppositions to the respondents within a period of two weeks from the date of receipt of copy of this Order and respondents would accept and consider the same.

5. Learned counsel for the petitioner states that officials of the respondents are acting in an arbitrary and mala fide manner forcing the parties to file such litigations. He points out that there is an Order dated 28th April, 1997 passed by Shri K.K. Sharma, Deputy Registrar, Trade Mark Registry, Mumbai in Application No, 500346/1988 in Sanyo Electric Co. Ltd. v. Paryaldas Mahlyomal Dhanwani as per which even if the opposition sent are time barred the person who has filed the opposition is given show cause notice to the effect as to why his opposition be not turned down as time barred and he points out that in spite of this ruling of the Trade Mark Registry at Mumbai. Registry is not following the same. Going by the facts of this case this grievance of the petitioner appears to be justified. Accordingly while disposing of this Writ Petition it is directed that respondent shall in dealing with such objections, shall have regard to its own ruling dated 28th April, 1997 referred to above.

6. Accordingly the Writ Petition stands disposed of.

7. Copy of the Order be given dusty to learned counsel for the parties.