
(1995) 08 DEL CK 0102
In the Delhi High Court
Case No : C.M. (Main) No. 493 of 1994

M/s. Gupta Industries	Vs	APPELLANT
M/s. Gupta Enterprises and another		RESPONDENT

Date of Decision : 04-08-1995

Acts Referred:

Citation : (1995) 08 DEL CK 0102

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Shri S.K. Bansal, for the Appellant; Shri M.R. Bhalerao, for the Respondent

Judgement

Usha Mehra, J.—Admit. Short point for consideration in this petition is whether the Registrar, Trade Mark could review his order which was decided on merits after hearing the parties.

2. The facts of the case are, that the petitioner filed opposition to the application of the respondent herein for registration of the trade mark "GUPTA". Various grounds were taken for the opposition. The Registrar after considering all the grounds came to the conclusion vide his order dated 6th April, 1994 that the opposition has to be allowed and the application of the respondent in Class 9 should be refused for registration. After passing of the said order dated 6th April, 1994, the respondent herein felt aggrieved and sought review of the said order, inter alia, on the ground that the Registrar did not take into consideration the agreement dated 5th January, 1988. That the opponent did not file any document showing prior user and of his reputation with regard to the trade mark and finally no evidence was led in opposition to prove their case. In the absence of the same, the order dated 6th April, 1994 was liable to be reviewed.

3. The Registrar, on the basis of these objections, re-heard the arguments and vide the impugned order set aside his earlier order dated 6th April, 1994. He delivered the impugned order thereby concluding that the opposition has to be

disallowed and the application filed by the present respondent to be accepted. According the proceeded to register the trade mark of the respondent.

4. So far as the provisions of C.P.C. are concerned, it is not disputed that the procedure for review as laid down under Order 47 C.P.C. are applicable to the procedures held by the Registrar. He in the impugned order took into consideration the provisions of Order 47 Rule 1 of C.P.C. but misapplied the same. Review of one's own order is permissible if there is error apparent on the face of the record. It means an error which strikes one on mere looking a record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. The power of review is very limited. The Reviewing court has not to act as an Appellate Court as held by the Supreme Court in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury,

5. In the present case as already observed above, the Registrar vide his order dated 6th April, 1994 gave a definite finding on merits after hearing the parties and after taking into consideration all the facts lead before him or averred before him. He was fully conscious that the petitioner/opponent before the Registrar had not lead any evidence as required under Rule 53. That the evidence was only lead by the respondent/applicant as required under Rule 54, but despite that he came to the conclusion that the opposition has to be allowed. Once the decision is given on merits then finality has to be attached to the same. By way of review, the Registrar could not act as an Appellate Authority. It is admitted by counsel for the parties at the bar that the Agreement dated 5th January, 1988 was not filed nor available on the record of the Registrar. Mr. Bhalerao, appearing for respondent contended that the Agreement referred in the impugned order was dated 21st June, 1988, by mistake the Registrar mentioned the date as 5th January, 1988. The Registrar on the review order has mentioned about the filing of agreement dated 5th January, 1988. It shows non-application of mind. Even while passing the impugned order, he did not consider which agreement has been mentioned in the opposition application.

6. In this view of the matter, I am of the view that the Registrar has no power to rewrite the judgment under the garb of review. That was beyond his jurisdiction. The impugned order is accordingly set aside.

7. Mr. Bhalerao states that since the respondent/applicant was pursuing legal remedy permissible under law and the Registrar decided the case in his favor, Therefore, now if the respondent chooses to file appeal the period spent till date may be excluded while computing the period of limitation. I think it is a reasonable request. Hence allowed. The period spent in pursuing the review petition and in this court may be excluded while counting the period of limitation, if the respondent is advised to file the appeal.