

(2011) 09 IPAB CK 0014

In the Intellectual Property Appellate Board

Case No : OA/70/2006/TM/KOL

M/S. Sona Spices Private Limited 746, Industrial Area, Phase-II Chandigarh - 160 002

APPELLANT

Vs

M/s. Soongachi Tea Industries Private Limited, 32-A, Ganesh Chandra Avenue Kolkata - 700 013 And Deputy Registrar Of Trade Marks Trade Marks Registry Kolkata

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Trade Marks Rules, 2002 — Rule 50, 50(3), 53, 53(2)
Trade Marks Act, 1999 — Section 131

Citation : (2011) 09 IPAB CK 0014

Hon'ble Judges : Prabha Sridevan, J;S. Usha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prabha Sridevan, J

1. This appeal has been filed against the dismissal of the review petition.

2. The 1st respondent applied for registration of trade mark ""Sona"" in Application No. 543386 in class 30. The appellant filed a notice of opposition on 26.6.1997. The 2nd respondent Deputy Registrar of Trade Marks sent notice under Rule 50(3) to file evidence in support of opposition on 19.7.1997.

After six years, when there was no response from the appellants, on 3.3.2005 the 1st respondent put the appellant on notice that since no evidence was filed, the opposition was deemed to have been abandoned. This was communicated to the appellant on 28.3.2005. On 25.5.2005, the appellant filed a review petition which was clearly time barred. The 1st respondent communicated to the appellant on 9.6.2005 that the review petition cannot be entertained since it was time bound. On 25.5.2005, the appellant t filed an

interlocutory petition for condoning the delay. The Miscellaneous Petition and the Review Petition were taken up for hearing and dismissed on 28.8.2006.

3 . The Learned Counsel for the appellant submitted that before passing the drastic order of shutting the appellant out, the 2nd respondent ought to

have given the appellant an opportunity. The Learned Counsel referred to the Full Bench decision of the Hon'ble Delhi High Court in 2000 PTC 24

(FB) in Hastimal Jain trading as Oswal Industries v. Registrar of Trade Marks and Anr., where it was held that the Rule 50

(3) was directory and not mandatory. The Learned Counsel submitted that the 2nd respondent ought to have first disposed the Interlocutory

Application before dealing with the main Review Petition. The Learned Counsel submitted that the Review Petition could have been treated as a

petition under Section 131 for filing evidence. The Learned Counsel pointed out that in the Review Petition, it was clearly stated that the appellant was

ready and willing to file the evidence. The Learned Counsel relied on the following decisions:

â?¢ 2000 PTC 24 (FB) C.M..(M) 525/1994 Hastimal Jain trading as Oswal Industries Vs. Registrar of Trade Marks & Anr.; C.M. (M) 137/1994

Raja Synthetics Vs. Pardeep Corpn. & ors.; CO.8/1992 Colgate Palmolive nCompany, USA Vs. Hindustan Rimmer, Delhi.

â?¢ 2001 PTC 246 (Del) C.M. (M) 93/1995 & CM 360/1995 Tata Engineering & Locomotive Co. Ltd. Vs. Religious Technology Centre. Here too it

was held that Rule 53(2) was directions and not mandatory.

â?¢ 2006 (32) PTC 287 (IPAB) Original Appeal No. 114/2004/TM/DEL And M.P. No. 123/2004 Hindustan Lever Ltd. Vs. Surinder Corporation &

Anr. This case too is on the same point.

â?¢ 2005 (30) PTC 444 (IPAB) M.P. No. 119/2004 and O.A. No.

106/2004/TM/DEL Asian Paints Limited Vs. Registrar or Trade Marks & Anr.

This case follows the Full Bench decision.

â?¢ 2008 (36) PTC 627 (IPAB) M.P.No. 58/07 in TA/02/2005/TM/KOL Prabhu Shankar Agarwal & Others Vs. Deputy Registrar of Trade Marks

& Others. In this case the Board held that Courts must lean in favour of affording opportunity to a party to give evidence.

â?¢ 1997 PTC (17) Division Bench of the Madras High Court in the case of K.L.

Rajakrishnan Vs. Parthas Textiles, Kottayam. This dealt with the discretionary power of the Registrar.

â?¢ 2009 (41) PTC 474 (Del.) W.P.(C) 8801-02/2009 Liberty Footwear Company Vs. Force Footwear Company & Others. In this case it was held that rules of procedure are directions and not mandatory.

4. The Learned Counsel for the 1st respondent submitted that the appellant has not made out any grounds for review, no ""sufficient cause"" has been given for condoning the delay and therefore the Review Petition and the Interlocutory Application were rightly dismissed.

5. We have considered the submissions made, the facts and the law applicable.

Rule 50.-Power of Registrar for variation or cancellation of registration as registered user:-

(3) The procedure for cancelling a registration shall be such as may be prescribed:

Provided that before cancelling a registration, the registered proprietor shall be given a reasonable opportunity of being heard.

6. Rule 50(3) was held to be directory and not mandatory in the above decisions. But in those cases the evidence was filed but with delay. In this case, the appellant is till now only ""ready and willing""; and 14 years have passed since the date by which the respondent was bound by Rule 53 to file evidence. The appellant pleads that principles of natural justice must be observed, according to the appellant before the order under Rule 50 (3) was passed, notice ought to have been served on him. The appellant pleads that the delay in filing the review ought to have been condoned.

7 . Section 131 provides for extension of time in cases where no time is provided under the Act, only if the Registrar is satisfied that there is sufficient cause.

8. In 1999, the appellant was called upon to file the evidence. It was after six years that the order of ""deemed abandonment"" is passed. This is sought to be reviewed. For reviewing an order, the review Petitioner should show error apparent on the face of the record or any other such vitiating factor.

Nothing is mentioned in the review petition. The grounds are that the matter is very old, the impugned order has been passed casually and so on.

There are not grounds for review. Even this petition is filed beyond time, the appellant is not vigilant. There is no prompt filing of review. The Registry

returned it as being time barred. Four months later it is re-submitted with an Interlocutory Application. The averment in the interlocutory application are identical to those in the Review Petition.

9. The appellant cannot expect the delay to be condoned when no reason much less sufficient cause has been made out. We do not see wherefrom

the appellant complains of failure of natural justice. In this case another factor is important. The laws of limitation must be applied liberally, provided

there is no injury to a third party. The 1st respondent's mark has been registered, in fact it has been kept on hold for nearly fifteen years because of

the appellant. Neither on law nor on facts the appeal has any merit.

10. It is dismissed with costs of Rs. 20,000/-.