

(2023) 08 DEL CK 0014

In the Delhi High Court

Case No : C.A.(COMM.IPD-TM) No. 73 Of 2022

Ravi Manchanda Trading As Seema Engineering Works

APPELLANT

Vs

Registrar Of Trade Marks

RESPONDENT

Date of Decision : 03-08-2023

Acts Referred:

Trade Marks Rules, 2017 — Rule 36(1)

Citation : (2023) 08 DEL CK 0014

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Rajesh Sharma, Harish Vaidyanathan Shankar, Srish Kumar Mishra, Sagar Mehlawat, Alexander Mathai Paikaday

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. This Court never ceases to be surprised at the kind of the orders which come before it, from the office of the Registry of Trade Marks/Controller General of Patents.

2. The present case is, in fact, sui generis. The order, dated 12 July 2018 – if one may call it that – under challenge reads thus:

"A Hearing in respect of the above matter came up before me on 12/07/2018 and the following is to be communicated to the applicant/agent:

1. Shri adv. Rajesh Sharma applicant/Advocate/Agent appeared before me and made his submissions. I have heard arguments, gone through the records and passed the following Order. Attention is invited under Rule 36(1) of the Trade Marks Rules, 2017 where the application is refused a request may be made in form no TM-M along with the prescribed fee to communicate in writing the grounds of decision and materials used by the Registrar in arriving at his decision to refuse the said application. The said request on form TM-M should be tendered

within 30 days of receipt of the order of refusal.

Dated: 12 July 2018

(HEMANT KHOSLA)

SENIOR EXAMINER OF TRADE MARKS

(Authorized under 3(2) of the Act)”

3. The part of the above communication which is supposed to contain the “order” is, therefore, gloriously blank.

4. What is even more piquant is the fact that, instead of bringing the attention of the Senior Examiner to the fact that he had in fact passed no order at all on 12 July 2018, the appellant wrote to him on 13 July 2018 seeking the grounds for the decision taken by him on 12 July 2018.

5. On not being communicated the grounds of non-existent decision, the appellant initially approached the learned Intellectual Property Appellate Board (IPAB) by means of the present appeal which was transferred to this Court consequent on abolishing of the IPAB.

6. The appeal has remained pending before learned IPAB for four years and before this Court for one year.

7. The fate of the appeal is pre-ordained.

8. However, inasmuch as there is no order at all, passed by the Senior Examiner of Trade Marks, I am really at a loss as to what to set aside.

9. Suffice it, therefore, to state that the Application No. 2561501, filed by the appellant for registration of its mark in Class 6 is restored to the file of the Registrar of Trade Marks, for being processed in accordance with law from the stage at which the non-existent order dated 12 July 2018 came to be passed.

10. The appeal stands allowed accordingly.

11. The Registrar in the office of the Trade Marks registry is directed to ensure that this application is dealt with expeditiously and that a decision thereon is taken within a period of six months from today, in accordance with law and after following the principles of natural justice and the procedure enshrined in the Trade Marks Act, 1999.