
(2002) 02 BOM CK 0073
In the Bombay High Court
Case No : Misc. Petition No. 18 of 1998

Raymond Ltd.

APPELLANT

Vs

Chanakya Beverages and Another

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Trade and Merchandise Marks Act, 1958 — Section 21(2)

Citation : (2002) 25 PTC 52

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : N.M. Ramakrishnan, for the Appellant;

Final Decision : Allowed

Judgement

D.K. Deshmukh, J.—By this petition, the Petitioner challenges the order dated 9th October, 1997 passed by the Asst. Registrar of Trade-marks.

2. The facts that are material and relevant for deciding this petition are that the Respondent No. 1 submitted an application for registration of its trade-mark. That application was advertised. The Petitioner on 11.2.1992 filed a notice of opposition as required by the provisions of Section 21(2) of the Trade Marks Act. A copy of the notice of opposition submitted by the Petitioner was forwarded by the Registrar to the Respondent No. 1 through his attorney alongwith letter dated 26.4.1993. The Notice of opposition was received by the attorney for the Respondent No. 1 on 5.5.1993. The Respondent No. 1 filed his counter-statement on 7.7.1993. On 15.11.1993, the Registrar issued a show cause notice to the Respondent No. 1 to show cause why his counter-statement filed on 7.7.1993 should not be taken on record as it has been filed beyond the period of limitation fixed by the statute. Admittedly, this show cause notice was received by the Respondent No. 1. Admittedly, no reply was filed by the Respondent No. 1. However, the learned advocate appearing for both parties appeared before the Registrar and the Registrar by an order dated 14.12.1994 held that in terms of the provisions of Sub-section (2) of Section 21 of the Act, the Respondent No. 1

is deemed to have abandoned his application as he has not filed his counter-statement within the statutory period of two months provided by Section 21. An application for review of the order dated 14.12.1994 was submitted by the Respondent No. 1. Grounds on which review of the order was sought were mentioned in the application. On being served with the review petition, the Petitioner filed its reply and contended that the order cannot be reviewed on the grounds which are mentioned in the review petition. That review petition has been decided by the order dated 9th October, 1997. By that order the review petition has been allowed and the order dated 14.12.1994 has been set aside. It is this order, which is impugned in this petition.

3. The learned Counsel for the Petitioner states that the Respondent No. 1 has been served. He undertakes to file affidavit of service within one week from today. None appears for the Respondent No. 1. There is also no affidavit in reply filed.

4. The learned Counsel appearing for the Petitioner submits that a show cause notice was issued by the Registrar to the Respondent No. 1 pointing out to him that his counter-statement has not been filed within the statutory period of limitation and, therefore, the Respondent No. 1 was called upon to show cause why the Registrar should not refuse to take that counter-statement on record. The Respondent No. 1 did not file any reply to that show cause notice. The Registrar, therefore, in the absence of any reply, found that admittedly the opposition was served on the Respondent No. 1 on 5.5.1993, Section 21 provides for two months time to file counter-statement. The counter-statement was not filed within a period of two months, and therefore, refused to take the counter-statement on record. With the result, by operation of statutory fiction contained in Sub-section (2) of Section 21, it was deemed that the Respondent No. 1 has abandoned his application for registration. The learned Counsel submits that perusal of the review application show that the review of the order was sought only on two grounds ; (i) that the order dated 14.12.1994 does not record rival submissions made before the Registrar and this is an error apparent on the face of the record, and (ii) that the Registrar has not made a speaking order refusing to take the counter-statement on record. Perusal of the order made by the Registrar shows that he has not reviewed the order on these two grounds, but has reappreciated the entire record as if he was sitting in appeal and after reappreciating the record has passed a fresh order on merits. According to the learned Counsel, this shows that the Registrar has made the order in review on the grounds other than the one which were raised in the review application and, therefore, the impugned order suffers from violation of principle of natural justice. The learned Counsel also submits that in review jurisdiction the Registrar could not have reappreciated the evidence on record.

5. Now, if in the light of these submissions, the record of the case is perused, it becomes clear that the notice of opposition admittedly was served on the attorney for the Respondent No. 1 on 5.5.1993. Section 21 requires a counter-

statement to be filed within a period of two months from the date of service on the applicant of the notice of opposition. The period provided by Sub-section (2) of Section 21 expired on 6.7.1993. Within that time the counter-statement was not filed and, therefore, show cause notice was issued by the Registrar asking the Respondent No. 1 to show cause why the Registrar should not refuse to take the counter-statement filed on 7.7.1993 on record. The Respondent No. 1 admittedly is duly served with this show cause notice. He did not file any reply to the show cause notice and, therefore, in the absence of any reply to the show cause notice, the Registrar refused to take the counter-statement on record and, therefore, recorded in his order that now the statutory fiction operates and the applicant is deemed to have abandoned his application. Perusal of the review application filed shows that there were only two grounds raised. They read as under :-

(i) The order, however, does not record any rival submission. This is an error apparent on face of the record ;

(ii) Thus, rule of natural justice requires a speaking order to be made in the proceedings where the parties have been heard ;

6. It is this review application containing only these two grounds that was served on the Petitioner. The Petitioner filed a detail reply to the review application pointing that merely because rival submissions are not recorded, it cannot be said that there is an error apparent on the face of the record. It was also contended that the reasons have been disclosed in the order. Perusal of the order impugned in the petition, however, shows that the Registrar has not reviewed the order on these grounds which are mentioned in the review application. But he has reappreciated the entire evidence on record and has recorded a different finding. In my opinion, apart from the question of width of the review jurisdiction of the Registrar, undoubtedly the order can be reviewed by the Registrar only on the grounds which are mentioned in the review application. Because, it is only those grounds of which notice is given to the other side. Reviewing of the order on grounds other than the one mentioned in the review application would result in violation of the principle of natural justice, because the other side will not have the notice that the Applicant who has filed the review application is seeking review of the order or any other grounds. I find that the submission of the learned Counsel that the order impugned in the petition suffers from violation of principle of natural justice is well founded.

In the result, therefore, the petition succeeds and is allowed. The order impugned is set aside.

Parties to act on simple copy of the order duly authenticated by the Associate/ Personal Secretary of the Court as a true copy.