
(2005) 02 IPAB CK 0006

In the Intellectual Property Appellate Board

Case No : R.P. No. 1/2004 In TA/100/2003/TM/DEL (CM(M) 551/94)

Rikab Chand Jain, Trading As T.T. Industries

APPELLANT

Vs

Swastik Pipes Ltd

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2005) 02 IPAB CK 0006

Hon'ble Judges : S. Jagadeesan, J;Raghubir Singh, J

Bench : Division Bench

Advocate : Aparajita Sinha, Anjula Chopra

Final Decision : Dismissed

Judgement

S. Jagadeesan, J

1. The respondent herein had filed the appeal TA/100/2003 against the order of the Registrar of Trade Marks, Delhi. The appeal was heard by the

Appellate Board on 30. 1.2004 in the absence of the applicant as well as their counsel. The said appeal was allowed.

2 . Now, the applicant has filed the review petition stating that the earlier counsel M/s. Aggarwal Associates withdrew from the brief and the

applicant appointed Shri Rajiv Bansal, who inspected the Court records on 15.9.1998. After the matter was transferred to the Appellate Board, the

applicant received the order dated 30.1.2004 under a cover letter dated 5.2.2004. Immediately on receipt of the copy of the order dated 30.1.2004, the

applicant contacted its attorneys M/s. Trade Mark Registration Bureau, Calcutta, to inspect the records on the above matter. The inspection was

accordingly done on 18.3.2004 and the Trade Mark attorneys sent their inspection report to the applicant on 22.3.2004. The present application for

review was filed without any delay. The reason for review is that the counsel for the applicant was not informed about the hearing date and the

signature found in the acknowledgment was not of the applicant and the same is an unidentified one which cannot be taken as a proof of service of

notice of hearing on the applicant. As the applicant did not have any opportunity to put forth its case before the Appellate Board and the order of the

Appellate Board dated 30.1.2004 being an ex-parte order, the same may be reviewed by recalling the said order.

3. We have heard Ms. Aparajita Sinha for the applicant and Ms. Anjula Chopra for the respondent.

4. We have perused the order of this Board dated 30.1.2004. At the outset, we have to state that the said order is not an ex-parte order and the matter

had been decided on merits after hearing the counsel for the respondent.

5. Coming to the grounds for review, the grounds are:-

1. The applicant had changed the counsel and M/s. Aggarwal Associates are no longer in the picture and Shri Rajiv Bansal, who is the present advocate, was not served with the notice.

2. Though the notice had been sent to the applicant, the signature found in the acknowledgment is not that of the applicant and the same is an

unidentified one and consequently, there is no proof of service of the notice of hearing of the applicant.

6. We have carefully considered the above contentions.

7. If at all these grounds are to be urged, it can be done only in the case of an ex-parte orders which are not on merits. As we have already said that

the order to be reviewed is on merits. Hence, both the grounds cannot be of any assistance to the applicant.

8. Even otherwise, on merits, we find that the vakalat of M/s. Aggarwal Associates is still on record and the notice of hearing has been sent to them

who also received the same and replied that the applicant has taken away the brief and the applicant may be informed. It is an admitted fact that the

notice was sent to the applicant and the acknowledgment was also received back by the Registry of this Board. The applicant disputes the signature in

the acknowledgment which, in our opinion, cannot be done at this stage. Shri Rajiv Bansal, the counsel who is supposed to have been engaged by the

applicant has not filed his vakalat. If really the applicant had engaged Shri Rajiv

Bansal, then, immediately on receipt of the order of the Appellate

Board, the normal conduct of the applicant would be to contact the counsel Shri Rajiv Bansal and not to approach the Trade Mark attorney at

Calcutta. Hence, the applicant's plea of engaging Shri Rajiv Bansal as the counsel is not established.

9. It is also not the case of the applicant that no one was authorized to receive the registered letters or any communication except the applicant. In that

case, any other member of the family or any authorized employee of the applicant's industry might have received the notice and signed the

acknowledgment. The administration section of the applicant's industry would naturally have a communication department or section. A mere

statement that the signature in the acknowledgment is unidentified is also after the inspection of the records. The applicant did not state that the

signature is of none of his employees or otherwise.

10. The applicant has filed the review petition of an order passed on merits. The scope of review is very much limited. The Supreme Court of India in

a leading case in Parsion Devi and Ors. Vs. Sunita Devi and Ors. reported in 1998 (1) CTC 25 1997 (8) SCC 715 has held s follows:-

9. Under Order 47, Rule 1, C.P.C. judgment my be open to review inter alia if there is a mistake or an error apparent on the face of the record. An

error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record

justifying the court to exercise its power to review under Order 47, Rule 1, C .P.C. In exercise of the jurisdiction under Order 47, Rule 1, C.P.C. it is

not permissible for an erroneous decision to be ""reheard and corrected"". A review petition, it must be remembered has a limited purpose and cannot be

allowed to be ""an appeal in disguise.

11. The learned judges of the apex court placed reliance on the earlier judgment in Thungabhadra Industries Ltd. Vs. The Government of Andhra

Pradesh, 1985 (5) SCR 174 at 186 and also the other judgment in Smt. Meera Bhanjia Vs. Smt. Nirmala Kumari Choudhury, 1985 (1) SCC 170

quoting with approval a passage from Abhiram Taleshwar Sharma Vs. Abhiram Pishak Sharma and Ors. - 1979 (4) SCC 38.9 On the above

principles, it is clear that the review is permitted only to correct an error apparent on the face of the record. Even if such an error is to be found out by

a process of reasoning, then the review cannot be made themselves because the learned judges are of the view that the review is in no means an

appeal in disguise whereby an erroneous decision is reheard and corrected by review lies only for correction of factual error.

12. In view of the above principles laid down by the Supreme Court, we are of the view that this is not a case for review since the matter had been

decided on merits. Virtually the petitioner is seeking rehearing of the matter by giving him an opportunity to put forth his case which cannot be done

under the guise of review. Accordingly the review petition cannot be entertained, and the same is dismissed.