
(2008) 02 IPAB CK 0010

In the Intellectual Property Appellate Board

Case No : R.P. No. 01/2008 In M.P. No. 72/2007 In ORA/62/2007/TM/DEL

Safari Bikes Limited

APPELLANT

Vs

Safari Cycles Pvt. Ltd. And Ors.

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Trade Marks Act, 1999 — Section 124, 127(c)

Intellectual Property Appellate Board (Procedure) Rules, 2003 — Rule 23

Citation : (2008) 36 PTC 650 (IPAB)

Hon'ble Judges : M.H.S. Ansari, J; Syed Obaidur Rahaman, Technical Member

Bench : Division Bench

Advocate : Shailen Bhatia, Neeraj Grover

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J

1. Instant petition has been filed for review of the order dated 07.11.07. By the said orders dated 07.11.07. M.P. No. 72/2007 filed for interim stay

was dismissed.

2. Shri Shailen Bhatia, Learned Counsel for the review Petitioner reiterated the submissions and contentions raised in the statement of case at the

sitting of the Bench of Delhi on 06.02.2008.

3. One of the objections raised on behalf of the Respondent in the said M.P. No. 72/2007 was with regard to the maintainability of the rectification

application itself. It was the submission of Shri Shailen Bhatia, Learned Counsel for the Respondent in M.P. No. 72/2007, that the rectification

application is filed without following the procedure prescribed under Section 124 of the Trade Marks Act, 1999 and hence not maintainable. Reliance

for that proposition was placed by Shri Bhatia, learned advocate upon the Division Bench judgement of the Gujarat High Court in Patel Field Marshal

Agencies v. P.M. Diesel Limited 1999 PTC (19) 718 and 2007 (34) PTC 469 (DB) (Del.); Astrazeneca UK Limited v. ORCHID Chemicals and

Pharmaceuticals and para 61 of judgement in Whirlpool Corporation v. Registrar of Trade Marks AIR 1999 SC 22 : 1998 PTC (18) 717 (SC).

4. As regards the question of obtaining prima facie satisfaction of the Civil Court regarding invalidity of the registration of the Defendant's trade mark,

in the order, review of which is sought, while rejecting the objection as to maintainability of the rectification application we held that:

That stage has not yet arrived in the suit, before that this rectification proceedings have been initiated. In the case on hand proceedings for

rectification have been initiated and these are already pending even before the plea regarding invalidity of registration of Defendant's mark is raised in

the civil suit.

4. One of the contentions raised in the present review petition is that this Board failed to appreciate the principle laid down by the Hon'ble Division

Bench of the Delhi High Court in Astrazeneca UK Limited v. Orchid Chemicals and Pharmaceuticals. It is also contended that in its said order dated

07.11.2007 this Board has not considered the doctrine of relation back which applies to amendment of pleadings.

5. Shri Shailen Bhatia, Learned Counsel for review Petitioner drew our attention to Rule 23 of the Intellectual Property Appellate Board (Procedure)

Rules, 2003 which lays down that a petition in triplicate may be made to the Registry in the prescribed Form-6 under these Rules within two months

from the date on which the order is communicated, accompanied by a statement setting forth the grounds on which the review is sought. It was

therefore, contended that this Board has the power and jurisdiction to review its own orders and decisions.

6. The foremost question for consideration is whether this Board has the jurisdiction or powers to review its own decisions or orders.

7. As regards Rule 23 relied upon by Shri Shailen Bhatia, learned advocate for review Petitioner suffice it to state that the rule itself does not confer

power on this Board to review its own orders. The rule merely prescribes the form in which an application for review may be made. The rule may be

contrasted with Section 127(c) of the Act. That provision deals with powers of registrar and based upon that the Registrar may on an application

made in the prescribed manner 'review its own decision'. There is no such corresponding provision either under the Act or the Rules framed

thereunder conferring power under this Appellate Board to review its own orders or decisions.

8. The Trade Marks Act, 1999 or the Rules made thereunder do not contain any provision conferring power on the Board to review its own decision

or order. No such provision has been brought to our attention by the Learned Counsel for the review Petitioner.

9. It is well settled principle that on adjudicatory authority cannot revise its own orders or reopen cases once decided by it unless there is an express

provision in the statute giving it such power. This is for the reason that once an adjudicatory body makes the decision it becomes final and can be

reopened only in accordance with the expressed statutory provision. The said adjudicatory authority itself becomes functus officio after it has made

its decision.

10. In *Grindlays Bank v. Central Government* the Supreme Court considered the expression 'review'. It was held that the expression 'review' is used

in two distinct senses, namely ""(1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous

order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the

face of the record."" It was further held, that it is in the latter sense that the Supreme Court in *Narshi Thakershi v. Pradyumansinghji* held that no

review lies on merits unless a statute specifically provides for it. It was also held that when a review is sought due to a procedural defect, the

inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such powers inheres in every

Court or Tribunal.

11. The decision of Supreme Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* AIR 1970 SC 1273 is an authority for the proposition

that the power of review is not an inherent power, it must be conferred by law either specifically or by necessary implication.

12. Review applicant herein is not seeking a review of our orders due to a

procedural defect or inadvertent error committed or even on the grounds of violation of principles of natural justice. As already noticed neither the Trade Marks Act, 1999 nor the Rules framed thereunder confer power on this Board to review its own orders.

13. In the case on hand, review is sought on merits. The error sought to be corrected is said to be one of law and according to the review Petitioner, it is apparent on the face of record. In other words, in our view, it is a case where the decision of the Supreme Court in Patel Narshi Thakershi's case would squarely apply.

14. Accordingly, without going into the merits of the contentions raised in the review petition, the same is dismissed as not maintainable. No order as to the costs.

15. Let the matter be listed for final hearing on 11.03.2008.