
(2012) 12 DEL CK 0206
In the Delhi High Court
Case No : LPA No. 872 of 2010

Sharp Kabushiki Kaisha

APPELLANT

Vs

Sunil Grover and Others

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Citation : AIR 2013 Delhi 98

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Akhil Sibal, with Mr. A.A. Mohan, Mr. Sushant Singh, Mr. P.C. Arya and Ms. Geetika Kapur, for the Appellant; Geeta Luthra, with Mr. Hari Narayan Takkar, Ms. Ashly Cherian for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Darmar Murugesan, Chief Justice

1. The present Letters Patent Appeal challenges the order dated 06.10.2010 dismissing the writ petition filed by the appellant. The issue relates to registration of trade mark "SHARP" in respect of "Television Boosters, Two-in-One, Television Antennae and converters". Respondent No. 1, Sunil Grover trading as M/s Analog Systems in New Delhi filed an application bearing No. 447061 dated 18.12.1985 in class 9 to the Deputy Registrar of Trade Marks, Delhi seeking for registration of trade mark "SHARP". The appellant, shortly referred to as "SKK", filed an opposition dated 07.02.1994 to the said application. Similarly, a separate opposition was also filed by M/s Associated Electronics and Electrical Industries (Bangalore) Pvt. Ltd., shortly referred to as "AEEIPL". The Deputy Registrar of Trade Marks, by its order dated 03.12.1997 allowed the opposition filed by SKK and consequently refused the registration of the mark in favour of respondent No. 1. Hence, the respondent No. 1 preferred an appeal bearing No. T.A./138/2003/TM/DEL before the Intellectual Property Appellate Board, shortly referred to as "IPAB". The said appeal is pending before the IPAB.

2. In the meantime, the opposition filed by AEEIPL was considered by the Deputy Registrar of Trade Marks, who by order dated 30.01.2004 held that the application No. 447061 in class 9 filed by Sunil Grover to be abandoned for want of prosecution in terms of Rule 56(3) of Trade Marks Rules, 2002. The said order dated 30.01.2004 had become final as no appeal was filed against the same by Sunil Grover.

3. The appeal filed by Sunil Grover challenging the order of the Deputy Registrar of Trade Marks dated 03.12.1997 was heard by IPAB and on 16.08.2007 the following order was passed:

ORDER SHEET

16.08.2007

Counsel for Appellant Shri M.K. Miglani

Counsel for Respondent Shri M.S. Bharathi

Heard counsel for the both the parties on 08.08.2007. After carefully considering the submissions made by the learned counsel for the parties, we are of the opinion that since the order dated 30.01.2004 passed by the Deputy Registrar of Trade Marks, New Delhi in the matter of application No. 447061 and in the matter of an opposition No. DEL-8306 by M/S Associated Electronic & Electrical Industries (Bangalore) Private Limited is not directly connected with, or any issue thereto are involved in the present appeal before us, we do not have jurisdiction to pass any order in relation to the aforesaid order of the Deputy Registrar of Trade Marks Delhi. In view of our aforesaid opinion, we do not think it necessary to take the written submissions of the learned counsel for the parties and the Note received from the Deputy Registrar of the Trade Marks, New Delhi.

Since the appeal is ripe for hearing, the same shall be listed for hearing on 23rd day of October, 2007. Let hearing notice along with a copy of this order sheet be issued to all the parties to the appeal

Sd/-

Member (T)

Sd/-

Vice-Chairman

4. By that order, the IPAB was of the view that it was not necessary to take the written submissions of the learned counsel for the parties and the note received from the Deputy Registrar of Trade Marks, New Delhi as it had no jurisdiction to pass any order in respect of the order dated 30.01.2004 passed by the Deputy Registrar of Trade Marks, New Delhi. Apparently, the said order came to be passed in an appeal filed by Sunil Grover challenging the order of the Deputy Registrar of the Trade Marks dated 03.12.1997. However, the IPAB directed the appeal to be heard on 23.10.2007.

5. It appears that SKK, who earlier filed the opposition to the application filed by Sunil Grover made an application being M.P. No. 121/2007 seeking for an order to dispose of the appeal in view of the abandonment of the application No. 447061 in class 9. That application was taken up for hearing and was directed to be closed by the following order dated 12.12.2007.

ORDER SHEET

12.12.2007

Counsel for Appellant Shri M.K. Miglani

Counsel for Respondent Shri M.S. Bharathi

Shri M.S. Bharathi learned counsel for the respondents in the main matter submitted that an application being MP No. 121/2007 has been filed on behalf of the respondents with the prayer that

This Hon''ble Board may be pleased to dispose of the above appeal in view of the abandonment of the application No. 447061 in Class 9

Learned counsel also brought to our notice that there is on record an order of this Hon''ble Board dated 16.08.2007 which directed the hearing of the appeal itself. In our view, as in the order dated 16.08.2007 of a bench of this Board, there is a direction for listing the main matter for hearing, we are not inclined to consider the MP No. 121/2007. We, however, make it clear, it is open to the applicant Sharp Kabushiki Kaisha to raise all such contentions in the main hearing. Liberty is accordingly reserved to the petitioner in MP NO. 121/2007 and, therefore, no order needs to be passed in MP NO. 121/2007, it is accordingly directed to be closed.

Let the main matter being T.A. No. 138/2003/TM/Del be listed for hearing on 09.01.2008.

Sd/-

Technical Member

Sd/-

Chairman

6. By that order, the IPAB observed that whatever the contentions that are available to SKK, can be raised in the main appeal. The challenge to the said order by SKK was not fruitful before the learned Single Judge as the writ petition came to be disposed of with certain directions. Hence, the present appeal.

7. Learned counsel appearing for the appellant has strenuously contended that as the application filed by Sunil Grover itself had been abandoned as could be seen from the order of the very same Deputy Registrar of the Trade Marks dated 30.01.2004, the appeal should have been disposed of in view of abandonment of

the application itself.

8. We have considered the above submissions of the learned counsel appearing for the appellant. In fact, when the appeal came up for admission, this Court by order dated 07.12.2010 has noted the factual matrix and issued noticed to the respondents. The facts above are not in dispute. The only question is as to whether by virtue of the order of the Deputy Registrar of the Trade Marks dated 30.01.2004 holding that the application filed by Sunil Grover bearing No. 447061 was abandoned, the appeal filed by the very same Sunil Grover challenging the order of the Deputy Registrar of the Trade Marks dated 03.12.1997 should be also dismissed. On coming to know that an application dated 18.12.1985 was made by Sunil Grover for registration of trade mark "SHARP", SKK filed opposition on 11.02.1994. That application was allowed by the Deputy Registrar of Trade Marks on 03.12.1997. Consequent to the said order, the application filed by Sunil Grover for registration was rejected. Questioning the said order, Sunil Grover filed appeal before the IPAB and the appeal is still pending.

9. In the meantime, when the appeal was pending, another opposition filed by AEEIPL came to be considered by the Deputy Registrar of Trade Marks and on noticing that the application for registration made by Sunil Grover was not followed up, it found that the said application was abandoned and accordingly, an order came to be passed on 30.01.2004. Whether by virtue of the said order dated 30.01.2004, the appeal preferred by Sunil Grover before the IPAB challenging the order of the Deputy Registrar of the Trade Marks dated 03.12.1997 also should be dismissed is the only question.

10. We have extracted both the orders of the IPAB dated 16.08.2007 and 12.12.2007. A reading of the order dated 16.08.2007 shows that IPAB had observed that in the matter of opposition by AEEIPL, the same was not directly connected or any issue thereto was involved in the appeal pending, it had refused to consider the appeal on the basis of the order of the Deputy Registrar of Trade Marks dated 30.01.2004, meaning thereby that the IPAB was of the view that the appeal filed by Sunil Grover challenging the order dated 03.12.1997 of the Deputy Registrar of the Trade Mark would be considered independently. For that reason only, the IPAB had directed the appeal to be listed for hearing on 23.10.2007. After the said order was passed, the SKK again filed another application being M.P. No. 121/2007 only seeking for disposal of the appeal in view of the abandonment of the application filed by Sunil Grover. While closing the said application by its order dated 12.12.2007, the IPAB had only directed that all the issues including whether the appeal should be disposed of in view of the abandonment of the application No. 447061 in class 9 could also be considered at the time the appeal is heard. It is not as if the said issue cannot be considered by the IPAB in the pending appeal as the appellant had been given liberty to canvass the same before the IPAB.

11. In view of the above, it is always open to the appellant to canvass all the points available in the appeal pending before the IPAB including the question as

to whether by virtue of the order of the Deputy Registrar of Trade Marks dated 30.01.2004, the appeal filed by Sunil Grover challenging the order of the Deputy Registrar of Trade Marks dated 03.12.1997 also to be dismissed.

12. The learned Judge has come to the correct conclusion in this regard while directing a similar liberty to the appellant herein. In fact, the learned Judge has requested the IPAB to endeavour to dispose of the appeal within a period of six months from the date of the said order. In view of the above, we do not find any merit to entertain the appeal and accordingly we dismiss the same. However, the appellant as well as the respondents are at liberty to canvass their respective contentions before the IPAB in the pending appeal. We also request IPAB to expedite the hearing of the appeal and dispose of the same early and in any case within a period of three months from the date of receipt of a copy of the order or production of the same by either of the parties.