(2013) 06 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : OA/08/2009/TM/KOL

Shivkumar Shankarrao Thakur, Mr. Shaktie And Mr. Girish Shankarrao Thakur — APPELLANT

Vs

Jakir Hossain Trading And The Joint Registrar Of Trade Marks — RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2013) 06 IPAB CK 0002

Hon'ble Judges : Prabha Sridevan, J;S. Usha, J

Bench : Division Bench

Advocate : Himanshu Kane, Manvendra Kane, M.S. Krishnan, S.P. Vijayaraghavan, Deepak Vaid, Pratik G

Final Decision : Dismissed

Judgement

Prabha Sridevan, J

1. This appeal is preferred against the order dated 19.01.09 in the IP (Interlocutory Petition) dated 29.12.2008 for production and inspection of the

documents in original as per list annexed. The Joint Registrar dismissed the IP as misconceived and therefore, the appeal is before us. The learned

counsel submitted that there are serious doubt with regard to the genuineness and authenticity of the documents produced by the respondents. There

was great miscarriage of justice by the dismissal of the IP. The learned Senior Counsel appearing for the respondent submitted that the respondents

had produced the documents, that there could not have been any dispute regarding the authenticity of the documents issued by statutory authorities.

The chronological sequences of events will explain the dispute between the parties. The application No. 769516 in Class 34 for registration of the

Trade Mark No. 203 Special Shiv Biri label per se was advertised before acceptance on 25.10.2003. This was made public on 13.01.2004. On

6.02.2004, the appellants filed a Notice of Opposition. The respondent filed a Counter Statement. This was served on the appellant for filing the

evidence by the Registry on 01.02.2005. The appellants filed their evidence on 11.05.2005 as per Rule 50. This was sent to the respondents on

07.05.2005 and was received on 22.05.2005. The respondent did not file the evidence in time. But they filed their evidence letter with IP for extension

of time. This was allowed by the Tribunal subject to the respondent filing another Form TM-56 with prescribed fee to cover the time from 11.07.2005

to 23.04.2008. The appellants were directed to file their reply evidence. They did not file it in time, but they filed TM-56 for extension of time and

therefore, filed their reply evidence. Finally, both parties paid the prescribed fees and evidence has been taken on record. The matter came up for

hearing on 28.08.2008. It was argued over several days. Then when the matter was resumed for hearing on 05.11.2008, the respondent completed his

submissions, the Counsel for appellant commenced his reply and then submitted that the documents filed were inconsistent and contradictory and

therefore, called upon the respondent to produce the originals. The hearing got adjourned and we agreed to one of the following dates viz. 18.11.2008

or 19.11.2008 or 20.11.2008, the respondent opted for 18.11.2008. The appellant promised that he would be available but then did not confirm the

dates till the late evening of 18.11.2008. The respondent counsel submitted that they had arranged for and complied with the directions to produce

original/certificate of documents and requested the Registrar to fix up an early date. Since the appellant did not send any communication, the Registrar

fixed up 25.11.2008. On 25.11.2008, the respondent appeared before the Tribunal at Calcutta coming all the way from Delhi and tendered the

original/certified copies of the documents-Original invoices for clearance and excisable goods, personal ledger account under the Excise Act duly

authorized by the Office. On that date no one appeared for the appellant and placed his request in Form-3 for adjournment. The respondent counsel

opposed the adjournment citing his expenses and inconvenience. But the Tribunal, in order to give a reasonable opportunity to the appellant adjourned

the matter to 29.12.2008. On that date, both the counsel appeared. The Counsel for the respondent again produced original/certified documents. The

Counsel for appellant completed the inspection. Then he referred to the IP filed on that date for directing the appellants to produce the documents in

original. The respondent filed his comments on the same date namely 29.12.2008 and objected to the IP. The hearing got adjourned. The matter was

taken up on 12.01.2009. On that date, the counsel appeared. The learned counsel for the appellant submitted that the respondent had filed the certified

documents which raised the important issues and they have not produced the original supporting documents, and that he had reasons to believe that the

documents are not genuine.

2. The counsel for the respondent submitted that they had brought on record sufficient and substantive proof in the form of original documents along

with the affidavits of Jalalludin and Ashraful Alam. The learned counsel submitted that for the first time, the genuineness had been doubted. He also

submitted that the certified copies produced by the respondents were certified to be true copies by Government officials or Notary Public or by the

author of the documents. It was contended by the Counsel for the respondent that the appellant was intended to protract the matter. After hearing

them the Tribunal held that an order for discovery will generally be made only when it is required in the interest of justice and is material to the case.

The Registrar was of the opinion that the documents produced were either original documents or certified copies filed with the proof of affidavit. He

also recorded that the respondents had complied with the proof of furnishing copies of the evidence. It is also recorded that when the respondents

tendered the documents before the Tribunal on 25.11.2008, no one was present on behalf of the appellant though that date was to be preemptory and

on final hearing the Registrar had sent the certified copies and has recorded that they are certified either by Government officials or by Notary Public

or by the author of the document. On a perusal of the documents, he has found that they do not appear to be doubtful. He was also of the opinion that

this issue relating to genuineness has been raised deliberately after the final arguments have been concluded, only to delay and procrastinate the

proceedings. We have also seen these documents that are termed to be ""doubtful"" and as recorded by the Registrar, they are certified to be true

copies by the authorities or by a Notary Public or by the author of the documents concerned. Even before us, the learned counsel wanted to see the original. The learned counsel for the appellant did not specify any circumstance or any aspect which caused a doubt on the genuineness of the

document. The narration of events by the Registrar would show that the respondent at all times cooperated and complied with the request. There does

not seem to have been any attempt to avoid the production of documents. We see absolutely no reason to interfere with this order. This appeal is

dismissed with a costs of Rs. 5,000/-.

