
(2015) 02 IPAB CK 0004

In the Intellectual Property Appellate Board

Case No : ORA/43/2008/TM/DEL

Sona Business Private Limited

APPELLANT

Vs

S.C. Chouhan And Ors.

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Citation : (2015) 02 IPAB CK 0004

Hon'ble Judges : K.N. Basha, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Advocate : M.K. Miglani

Judgement

K.N. Basha, J

1 . This application is filed for the removal of impugned trade mark SONA under registration No. 1197956 in Class 06 in the name of Shri S.C. Chouhan, trading as Shiv Enterprises.

2. Mr. M.K. Miglani, the learned counsel is appearing for the applicant. The respondent neither appears in person nor through any advocate today. It is seen that even for the last date of hearing the respondent was called absent as he was not appearing or represented by any counsel. The online verification revealed that notice was served on the earlier occasion to the respondent. It is pertinent to note even for the today's hearing, the notice was already served on the respondent as per verification of the records of the registry. However, the respondent has not chosen to appear either in person or through any advocate even today.

3 . Mr. M.K. Miglani, the learned counsel for the applicant would submit that the applicant has already filed a civil suit No. 51/2007 on the file of Additional District Judge, Delhi and in that consent decree was passed on the basis of the undertaking given by the respondents herein who are the defendants in the suit to the effect that the undertake that they will not use the impugned trade mark "SONA" for any manufacturing products in respect of the goods manufactured

and used by the applicant herein.

4. It is contended that subsequently the respondents in violation of their undertaking started using the impugned trade mark name and it is defendant by them saying that they are not related to the goods of the applicant and on the other hand they are using the same for industrial purpose. The learned counsel would submit that thereafter, the applicant preferred present application for rectification of the impugned trade mark against the respondent and also filed the execution petition for the execution of the consent decree passed by the Civil Court.

5. The learned counsel would pointed out that even in the execution petition in EP No. 182 of 2010 in Suit No. 51 of 2007 filed before the Additional District Judge, Delhi. The respondent No. 1 herein filed the counter affidavit namely M/s. Shiv Enterprises represented by Shree Chand Chouhan, son of Late Sh. Megh Raj Chouhan specifically stating that they are not using the impugned trade mark for any purpose and also given the paper publication to that effect in Para 4 and 5 of the counter affidavit. The learned counsel would also submit that on the basis the Execution Court passed an order dated 16.01.2015 regarding the statement made by the learned counsel for the Decree Holder to the effect that the decree passed in favour of Decree Holder has been satisfied and accordingly the execution petition was disposed off. Therefore, it is contended that the above said factors may be the reason for the respondent absenting themselves by appearing before the Bench in these proceedings and the present rectification application may be allowed.

6. We have carefully considered the contentions put forwarded by the learned counsel for the applicant and also perused the counter affidavit filed by the respondent No. 1 herein in the Execution Petition No. 182 of 2010 in Suit No. 51 of 2007 on the file of Additional District Judge, Delhi.

7. The fact remains that the applicant herein has filed a counter statement in Suit No. 51 of 2007 against the respondent No. 1 and another dependant and the suit was decreed by mutual consent and on the basis of the undertaking given by the respondent No. 1 herein as the first defendant in the said suit to the effect that they undertake that they will not use the impugned trade mark for the goods manufactured by the applicant herein. It is pertinent to note as pointed out by the learned counsel for the applicant that in the execution petition No. 182 of 2010 filed in Suit No. 51 of 2007 on the file of the Additional District Judge, Delhi, the respondent No. 1 herein has specifically stated as hereunder.

3. I say that I did not sell, manufacture or carry out any trading in respect of sanitary and CP bathroom fittings and water supply included gun metal valve (used for sanitary bathroom and water supply for those purposes) under the trade mark SONA and/or any other trade mark as may be deceptively and confusingly similar amounting to passing off the goods and business as that of the plaintiff/petitioner. I further say that I had been dealing in gun metal valves

being used for industrial purposes only. The said gun metal valves were not being used for sanitary bathroom fittings and for water supply for those purposes. Thus, I did not commit any act amounting to contempt of court. There is no deliberate and willful disobedience of any order of undertaking given by me to the Hon'ble Court. I have always complied with the undertakings given by me and did/do not deal in the products under the trade mark SONA sanitary, bathroom fittings/CP fitting or for the water supply for those purposes.

4. I say that after filing the affidavit before this Hon'ble Court, I got published the Public Notice in the newspaper Punjab Kesari dated 05.06.2011 and the same was got published in the Jalandhar Kesari a supplement to the said Newspaper. The copy of the said Public Notice has already been filed on record. Even otherwise, I also got published the Public Notice in the Newspaper Dainik Bhaskar, New Delhi on 02.11.2011. Copy of the same is also on record. I did/do not manufacture/sell any product under the trade mark SONA. I discontinued manufacturing/selling/dealing in gun metal valves meant for industrial purposes, after filing of the affidavit before this Hon'ble Court.

5. I say that I had been dealing in the different categories of industrial valves and cocks but did not sell, manufacture the bathroom fittings, CP fittings under the trade name of Sona and also did not sell or manufacture the gun metal valves (used for sanitary bathroom and water supply for those purposes) after the passing of the decree/undertaking given by me on 26. 05.2007. However, I have stopped dealing in gun metal valves and cocks under the trade name of Sona of different categories/industrial use also, after filing of the affidavits before the Hon'ble Court. I did not commit any deliberate/willful disobedience of the decree/undertaking and the affidavit filed by me.

6. I say that I have tendered unconditional and unqualified apology in respect of the unintentional omission, if any, taken place in getting the publication of notice in compliance to the order passed by this Hon'ble Court. I have got published the said public notice having all bonafide intentions and after filing of the affidavit did not sell or manufacture those goods i.e. gun metal valves and cocks being used for industrial purposes. However, due to the bonafide omission, the particular word of industrial use could not be inserted/explained in those public notices. Thereafter, the corrected Public Notice was got published on 02.11.2011.

8 . The reading of the above said specific and categorical statement made by the respondent No. 1 herein makes it crystal clear that they have undertaken has not to use the impugned trade mark for the manufacture of the goods for any purposes including the industrial purpose. It is relevant to note that the Learned Additional District Judge, Delhi had also passed an order dated 16.01.2015 by recording the statement made by the learned counsel for the decree holder as hereunder.

"Ld. Counsel for the DH submits that JD are not using the said trade mark in contravention of the decree. He submits that decree passed in favour of DH has

been satisfied."

The above said order makes abundantly clear that the execution petition was closed by recording statement of the learned counsel for the decree holder to the effect that the decree passed in favour of decree holder has been satisfied.

9. Considering the above said factors, it is very much evident that the respondent has neglected to appear before this Bench in this matter. We are constrained to express our displeasure about the conduct of the respondent No. 1 for not appearing before us by expressing their stand. In view of the aforesaid reasons, we are constrained to allow the application and direct the Registrar of Trade Marks, New Delhi to remove the impugned registered trade mark "SONA" under No. 1197956 in Class 06 in the name of Shree S.C. Chouhan trading as M/s Shiv Enterprises within a period of two weeks from the date of receipt of the order copy of this Bench.