

(2001) 01 DEL CK 0133

In the Delhi High Court

Case No : C.M. (M) 93 of 1995 and CM 360 of 1995

Tata Engineering and Locomotive Co. Ltd.

APPELLANT

Vs

Religious Technology Centre

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Trade and Merchandise Marks Rules, 1959 — Rule 53, 53(2)

Citation : (2001) 01 DEL CK 0133

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : P. Nagesh, for the Appellant; Yakesh Anand, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—Due to non-filing of the evidence by the petitioner its application opposing the registration of the trade mark was dismissed by the Court after holding that the provisions of Rule 53 of the rules framed under the Trade and Merchandise Marks Act was mandatory and due to the evidence have not been filed within the prescribed period, the opposition would be automatically deemed to have been abandoned.

2. A Full Bench of this Court in a judgment reported as Hastimal Jain Trading as Oswal Industries Vs. Registrar of Trade Marks and Another, has held that Rule 53(2) is merely directory and not mandatory and that under Clauses (b) & (c) of Rule 53(2), the Registrar has the power to extend time for filing evidence even though the period mentioned in Rule 53 or the extended period thereof has expired and even though an application for extension of time was made beyond that period. In view of the authoritative pronouncement of the Full bench of this Court, the order of the Deputy Registrar of Trade Marks cannot be sustained and is accordingly set aside. The matter is remanded back to the Registrar of Trade Marks for decision in accordance with the observations of this Court in the aforesaid judgment. Parties are directed to appear before the Registrar, Trade Marks on 19th March, 2001.

CM 360/95:

3. Since the petition has been disposed of, this application has become infructuous and is accordingly dismissed as infructuous.

Petition disposed of.

4. Application dismissed as infructuous.