
(1998) 05 GUJ CK 0001

In the Gujarat High Court

Case No : Spl. Civil Application No. 8914 of 1997

Torrent Pharmaceuticals Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Trade and Merchandise Marks Act, 1958 — Section 101
Trade and Merchandise Marks Rules, 1959 — Rule 53(2)

Citation : AIR 1998 Guj 285 : (1998) 3 GLR 2090 : (1999) 1 RCR(Civil) 2

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : R.R. Shah, for the Appellant; T.N. Daruwalla and P.P. Banaji, for the Respondent

Judgement

M.S. Shah, J.—This petition under Article 226 of the Constitution is filed by Torrent Pharmaceuticals Limited praying for a writ of mandamus or any other appropriate writ directing the Union of India through the Registrar of Trade Marks and the Assistant Registrar of Trade Marks at Ahmedabad (hereinafter referred to as the Assistant Registrar) to treat the evidence filed by respondent No. 3 the Wellcome Foundation Ltd. by way of two affidavits in the Opposition proceedings to the petitioner's application for registration of trade mark as taken of from the record and to treat the Opposition proceeding bearing No. AMU-916 as abandoned under Rule 53(2) of the Trade and Merchandise Marks Rules, 1959 (hereinafter referred to as the Rules). The petitioner has also prayed for quashing and setting aside the order dated 30-9-1997 passed by the Assistant Registrar disposing of the interlocutory petition filed by respondent No. 3 herein taking the affidavits and the documents filed by respondent No. 3 on record as further evidence in support of the Opposition proceedings. With consent of the learned Counsel for the parties the petition was taken up for final disposal.

2. The facts leading to filing of the present petition, as averred by the petitioner, are as under :

"The petitioner is engaged in the business of manufacturing and marketing Pharmaceutical and Medicinal preparations for over two decades. The petitioner made application for registration of its Trade Mark VIREX on 27-1-1987 in Class 5 in respect of Medicinal and Pharmaceutical Preparations. In the Trade Journal dated 1-1-1995 the petitioner's application for registration of aforesaid trade mark was advertised before acceptance. On 6-4-1995 respondent No. 3 filed its notice of Opposition to the registration of the trade mark applied for by the petitioner, as provided for in Rule 51 of the Rules. On 10-10-1995 the petitioner filed Counter statement under Rule 52 of the Rules and a copy of the same was served by the Assistant Registrar on the Trade Mark Attorney of respondent No. 3. The copy of the counter statement was sent by the Assistant Registrar alongwith letter dated 13-11-1995. Respondent No. 3 thereafter filed an application on 15-1-1996 for three months' extension to adduce their evidence in support of their Opposition as contemplated by Rule 53 of the Rules. The application was granted by the Assistant Registrar and the time for adducing evidence was extended upto 13-4-1993 as per Communication dated January 18, 1996 of the Assistant Registrar. Against extension was sought for by respondent No. 3 on 16-4-1996, which was granted on June 4, 1996 and respondent No. 3 was granted time to adduce evidence upto 13-7-1996. Respondent No. 3 again applied extension of time on 5-7-1996 mentioning therein the grounds for praying for extension. The time was ought upto 12-9-1996 to adduce evidence. In the meantime, on 13-7-1996 the Advocate of opponent No. 3 forwarded an affidavit of Mr. Kasim Master, constituted Attorney of respondent No. 3 to the Assistant Registrar alongwith letter stating that the affidavit of Mr. Kasim Master tendered as part evidence in support of Opposition and that further evidence in support of Opposition will also be filed shortly. The said affidavit was received by the registry and by letter dated 21-8-1996 the Assistant Registrar invited the attention of the petitioner's Attorney to Rule 54 requiring the petitioner to adduce evidence in support of the petitioner's application for registration.

Again on 18-9-1996 the Attorney of respondent No. 3 Attorney filed application for extension for two months time to adduce evidence in support of their Opposition as further time was required for collecting evidence of bills, invoices, literature of ZOVIRAXM a life saving drug and to collect world wide sales figures with documentary evidence. It appears that no action or decision was taken by the Assistant Registrar on the said extension application. Thereafter on 9-10-1996 Affidavit of Ms. Lesley Jane Edwards, Trade Marks Manager of respondent No. 3 alongwith several exhibits was filed with the Assistant Registrar on 2-10-1996. A copy of the said affidavit was also served on the petitioner's Attorney. On 23-10-1996 Interlocutory petition was filed by respondent No. 3 for taking on file the affidavit of Ms. Lesley Edwards and to condone delay in adducing the evidence in support of the Opposition lodged by Respondent No. 3 to the petitioner's application for registration of VIREX trade mark. After the interlocutory Petition was served upon the petitioner's Attorney, written comments dated 17-12-1996 come to be filed by the petitioner's Attorney to

oppose the Interlocutory Petition filed by respondent No. 3. The aforesaid Interlocutory Petition came to be heard by the Assistant Registrar on 22-9-1997. By order dated 30-9-1997 the Assistant Registrar allowed the above Interlocutory Petition observing that it is a cardinal principle of justice that the evidence filed by the contesting parties though filed late should not be shut out at any stage during the course of proceedings of the case. The Assistant Registrar ordered to take affidavit of Ms. Lesley Edwards and the documents filed therewith on record as further evidence under Rule 53 of the Rules in support of the Opposition and further directed respondent No. 3 herein to pay a sum of Rs. 500 (five hundred only) as costs to the petitioner herein (respondent in the Interlocutory Petition). By the said order the Assistant Registrar also required the petitioner herein to file their evidence under Rule 54 in support of their application within two months from the date of receipt of the said order by the petitioner. The petitioner thereupon filed by the petition on 8-12-1997 praying for the aforesaid reliefs."

3. At the hearing of the petition Mr. R. R. Shah, learned Counsel for the petitioner raised the following contentions :

(i) Since the petitioner's counter statement under Rule 52 was filed on 10-10-1995 and the same was sent by the Assistant Registrar of Trade Marks, Ahmedabad to respondent No. 3 on 13-11-1995, respondent No. 3 was required to adduce evidence in support of their opposition within two months i.e., by 13-1-1996, but that was not done and the registry of trade marks had received the application of opponent No. 3 for extension of time only on 15-1-1996. Hence the Assistant Registrar had no jurisdiction to grant the application for extension after expiry of period of two months stipulated in Rule 53 of the Rules.

(ii) In any view of the matter, once the Assistant Registrar took on record the affidavit of Mr. Kasim Master on behalf of respondent No. 3 under Rule 53 and by letter dated 21-8-1996 the Registrar invited the attention of the petitioner's attorney to Rule 54 of the rules for leading petitioner's evidence in support of their application for registration, thereafter the Assistant Registrar has not jurisdiction to entertain any further application of opponent No. 3 for extension. Once the Assistant Registrar issued notice under Rule 54 of the Rules the stage of adducing evidence of respondent no. 3 was closed and it was not open to respondent No. 3 to adduce evidence thereafter nor was it open to the Assistant Registrar to accept any evidence. If the opponent in Trade Mark proceedings does not adduce evidence in support of his Opposition within the time limit granted by the Assistant Registrar he shall be deemed to have abandoned his Opposition and, therefore, the Assistant Registrar should have held that respondent No. 3 had abandoned its Opposition. Strong reliance is placed upon the provisions of Rule 53.

The learned Counsel for the petitioner has also heavily relied on the decision of the Delhi High Court in the case of Hindustan Embroidery Mills Pvt. Ltd. v. Hemla Embroidery Mills Pvt. Ltd. and another (1978(3) IPLR 148), and also an another

decision of the" Delhi High Court in the case of M/s. V.I.P. Industries Ltd. Bombay v. The Registrar of Trade Marks, New Delhi and another (1995 PTC 86).

4. On the other hand Mr. T. N. Daruwala, learned Counsel for respondent No 3, appearing on Caveat, opposed the petition and made the following submissions :

(i) The order passed by the Asstt. Registrar, accepting the evidence adduced by respondent No. 3 was passed in exercise of his discretionary power and the present petition under Article 226 of the Constitution for a writ of mandamus may, therefore, not be entertained. The time limit prescribed in Rule 53 for the opponent to adduce his evidence in a trade mark proceeding is directory and not mandatory and the Registrar/Asstt. Registrar has the power to grant extension under the provisions of Rule 53. Even otherwise Section 101 of the Trade and Merchandise Marks Act, 1958 and Rule 106 of the Rules confer power on the Registrar to extend the time for doing any act whether the time so specified has expired or not.

(ii) The view taken by the Delhi High Court in the case of Hindustan Embroidery (supra) is not the correct view and the said decision is pending consideration before a Full Bench of Delhi High Court. In any view of the matter, the Bombay High Court has already taken a contrary view in the case of Kantilal Tulsidas Jobanputra v. The Registrar of Trade Marks and another (1982 PTC 127), by holding that the provisions of Rule 53 are directory and that the legislature never intended to lay down a rigid rule, ignoring the genuine circumstances which may require extension of time for filing evidence beyond the period of two months.

5. I have heard the learned Counsel for the contesting parties at length. Before discussing the rival contentions it will be necessary to refer to the relevant statutory provisions.

The Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the Act) was enacted to provide for the registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise. Chapter III of that lays down the procedure for the duration of registration of trade mark. Section 18 provides as to how the application for registration is to be made. Once the registry accepts such an application the application is required to be advertised u/s 20 in a Trade Mark Journal. Once the application is advertised there may be opposition to registration of the trade mark in favour of the applicant and, therefore, Section 21 makes provision for lodging such Opposition and as to how such Opposition is to be dealt with. The provisions of Section 21 have a direct bearing on the controversy at hand and are, therefore, required to be quoted :

"21. Opposition to registration :

(1) Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made

to him in the prescribed manner and on payment of the prescribed fee, allows given notice in writing in the prescribed manner to the Registrar, of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter statement of the grounds on which he relies for his application and if he does not do so he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar and the Registrar shall give an opportunity to them to be heard if they so desire.

(5) The Registrar shall, after hearing the parties, if so required and considering the evidence, decide whether and subject to what conditions or limitation, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(6) *** **

Section 97 confers upon the Registrar all power of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses and also to award costs. Section 97 also confer power upon the Registrar to review his own decision. Section 101 deals with the extension of time and reads in the following terms :

101. Extension of time.

(1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause, for extending the time for doing any act (not being a time expressly provided in the Act) whether the time so specified has expired or not, he may, subject to such condition as he may think fit to impose, extend the time and notify the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the registrar under this section."

Section 109 provides for appeals to the High Court against a decision of the Registrar under Sections 17 or 18 or Section 21 of the Act. Section 133 of the Act confers powers upon the Central Government to make rules to carry out the purposes of the Act.

6. The Central Government, in exercise of the aforesaid powers, has framed the Trade and Merchandise Marks Rules, 1959. Rule 51 of the said Rules provides how a notice of opposition is to be filed with the Registry of Trade Marks upon an advertisement of an applicant for trade mark. Rule 52 provides that when a notice of opposition is filed under Rule 51, the application for registration of trade mark is required to file counter statement within two months from the receipt by the applicant of the copy of the notice of opposition and the counter statement is required to set out what facts, if any, alleged in the notice of opposition, are admitted by the applicant. A copy of the counter statement is required to be served by the Registrar on the person giving notice of opposition. Forms are prescribed for the aforesaid purpose. Rules 53 to 56 contain provisions for evidence to be adduced by the parties and read as under :

R. 53. Evidence in support of opposition :

(1) Within two months from the service on him of a copy of the counter-statement by the Registrar, the opponent shall either leave with the Registrar such evidence by way of affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall deliver to the applicant copies of any evidence that he leaves with the Registrar under this sub-rule.

(2) If an opponent takes no action under sub-rule (i) within the time therein prescribed, he shall, unless the Registrar otherwise directs be deemed to have abandoned his opposition.

R. 54. Evidence in support of application :

Within two months from the receipt by the applicant of the copies of affidavits in support of the opposition or of the intimation that the opponent does not desire to adduce any evidence in support of this opposition, the application shall leave with the Registrar such evidence by way of affidavit as he desires to adduce in support of his application and shall deliver to the opponent copies thereof or shall intimate to the Registrar and the opponent that he does not desire to adduce any evidence but intends to rely on the facts stated in the counter-statement and or on the evidence already left by him in connection with the application in question. In case the applicant relies on any evidence already left by him in connection with the application, he shall deliver to the opponent copies thereof.

R. 55. Evidence in reply by opponent :

Within one month from the receipt by the opponent of the copies of the applicant's affidavits, the opponent may leave with the Registrar evidence by affidavit in reply and shall deliver to the applicant copies thereof. This evidence shall be confined to matters strictly in reply.

R. 56. Further evidence :

No further evidence shall be led on either side; but in any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to lead any evidence upon such terms as to costs or otherwise as he may think fit."

Rule 59 provides for hearing and decision. Rule 106 of the Rules provides for extension of time as contemplated by Section 101 of the Act, in the following terms :

R. 106. Extension of time :

(1) An application for extension of time u/s 101 not being a time expressly provide in the Act or prescribed by Rule 81 or by sub-rule (4) of Rule 88 or a time for the extension of which provision is made in the rules shall be made on Form No. TM-56.

(2) Upon an application made under sub-rule (1) the Registrar, if satisfied that the circumstances are such as to justify the extension of the time applied for, may, subject to the provisions of the rules where a maximum time limit is prescribed and subject to such conditions as may be think fit to impose, extend the time and notify the parties accordingly and the extension may be granted though the time for doing the act or taking the proceeding for which it is applied for has already expire."

7. A conjoint trading of the aforesaid provisions of the Act and the Rules clearly indicates that while the provisions of the Act stipulate the time limit within which a party opposing the proposed registration of a trade mark may file its notice of opposition (three months from the date of advertisement Section 21(1) of the Act) and the time limit within which the applicant is required to file his counter-statement (within two months from the receipt of the copy of the notice of opposition by the applicant Section 21(2) of the Act), the Act does not stipulate any time limit for the evidence which shall be submitted by either of the parties and Section 21(4) clearly lays down that any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar and the Registrar shall give an opportunity to them to be heard if they so desire. The manner and the time for adducing evidence are provided for in Rules 53 to 56 quoted hereinabove. In view of the above statutory provisions Mr. Daruwalla is justified in contending that since the Act does not itself expressly provide for time to adduce evidence, the provision of Section 101 are wide enough to confer sufficiently wide discretionary power on the Registrar to extend the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not. Sub-section (2) of Section 101 goes to the extent of providing that while considering such application for extension of time, the Registrar may not even hear the parties before disposing of an application for extension of time and that no appeal shall lie from any order of the Registrar passed under this section. It is therefore, clear that even if a party has not filed an application for

adducing evidence within a period of two months from the date of service on him of a copy of the counter-statement that party may apply to the Registrar for extension of time u/s 101(1) of the Act read with Rule 106(1) of the Rules in Form No. TM 56 which is prescribed for the purpose. It is also pertinent to note that Rule 53 itself contemplates that the Registrar has discretion in the matter and therefore, even if the opponent has not adduced any evidence in support of his Opposition or even if he has not filed an application that he intended to rely on the facts stated in the notice of Opposition, it is open to the Registrar to direct that the consequences of the deeming fiction of abandonment of the Opposition shall not follow. If the Registrar had no jurisdiction to pass any order of extension after expiry of initial period of two months or subsequently extended time limit fixed by the Registrar, the words "unless the Registrar otherwise directs" would be rendered nugatory.

8. Otherwise also it is required to be noted that even when the opponent is deemed to have abandoned his opposition, the application for registration is not deemed to have been automatically granted because the applicant for registration is still required (by Rule 54) to lead evidence in support of his applicant, or to file an intimation that he intends to rely on the facts stated in the counter statement or on the evidence already led by him in connection with the application in question. Even thereafter the opponent has a right to controvert the evidence led by the applicant by filing an affidavit-in-reply under Rule 55, though of course this evidence shall be confined to matters strictly in reply. Further Rule 56 goes so far as to confer powers on the Registrar to permit either the applicant or the opponent to lead any evidence at any time of course upon such terms as to costs as he may deem fit and it is thereafter upon completion of evidence that the Registrar fixes a date of hearing of the arguments, hears and finally decides the application whether the application for registration is to be granted conditionally or unconditionally or is to be rejected.

9. In view of the aforesaid clear statutory provisions contained in Section 101 of the Act read with Rules 53, 56 and 106 of the Rules, this Court is clearly of the opinion that Rule 53(2) is directory and that the view taken by the Delhi High Court in the case of Hindustan Embroidery Mills, (supra), that Rule 53(2) is mandatory and operates automatically and that after the opposition is deemed to be abandoned by operation of Rule 53(2) the Registrar is not entitled to call upon the opponents to file evidence in support of the opposition, does not correctly reflect the legislative intent. This Court prefers to accept the view of the Bombay High Court in the case of Kantilal (supra) that the provisions of Rule 53(2) that the opposition shall be deemed to have been abandoned unless the Registrar otherwise directs, clearly indicates that the legislature never intended to lay down a rigid rule, ignoring the genuine circumstances which may require extension of time for filing evidence beyond the period of two months. The legal fiction thus not being absolute and being controlled by the discretion of the Registrar to extend the time, the procedural rule is clearly directory and not mandatory.

10. Coming to the facts of the instant case the contention of Mr. Shah that respondent No. 3 must be deemed to have abandoned his opposition on account of the non-filing of the application for extension by 1-1-1996 is clearly misconceived in facts because the two months time stipulated by Rule 53(1) for adducing evidence of the opponents is to begin from the date of service on the opponent (respondent No. 3 herein) of a copy of the counter statement filed by the petitioner and this service is to be effected through the Registrar. Hence, merely because the Registrar had sent a copy of the petitioner's counter-statement to respondent No. 3 alongwith Registrar's letter 13-1-1995 it did not mean that the period of two months referred to in Rule 53(1) commenced from 13-11-1996. It commenced from the date on which respondent No. 3 received a copy of the petitioner's counter-statement. The averment made on behalf of respondent No. 3 that the said counter-statement and the Registrar's letter dated 13-11-1995 were received by respondent No. 3 on 22-11-1995 is not controverted and, therefore, the first contention of Mr. Shah has to be rejected as even on facts, respondent No. 3 had filed its first application for extension of time to adduce evidence within the prescribed period of two months from the date of service of the Counter Statement.

11. As far as the subsequent periods are concerned, it is true that on 18-1-1996 the Assistant Registrar had granted the application of respondent No. 3 for extension of time for filing evidence upto 13-4-1996 and that respondent No. 3 had filed its application dated 12-4-1996 which was received by the Registrar at Ahmedabad on 16-4-1996 and therefore, filing of the application for extension can be said to be beyond the period of extension granted by the Assistant Registrar. However, in view of the scheme of the Act and the Rules discussed earlier, it was open to Registrar/Assistant Registrar to entertain such application even after expiry of extended time and to consider the same on merits.

12. However, there is a serious dispute about the power of the Registrar to accept any further evidence after the affidavit of Mr. Kasim Master on behalf of respondent No. 3 was taken on record under Rule 53 and the petitioner's attorney was called upon for leading petitioner's evidence under Rule 54 as evidenced in the letter dated 21-8-1996 (page 206), relevant portion of which reads as under :

Government of India Trade Mark Registry Branch. 21-8-1996. From : Asstt. Registrar of Trade Marks, To : M/s. Jahangir Gulabbhai & Bilimoria Daruwalla. Sub. : Oppn. No. AMD 916 to Application No. 466523 Sir, I am to inform you that the evidence filed by you in support of Opposition had been taken on record under Rule 53. Yours faithfully, Sd/- Asstt. Registrar of Trade Marks. No. : Date : Copy forwarded to : Their attention is invited to Rule 54. M/s. R. R. Shah & Co., Sarup Building, Ahmedabad-14."

It is therefore, submitted that the stage of leading opponent's evidence u/s 53 was closed by inviting the attentions of the Attorney of the applicant to Rule 54.

13. Mr. Daruwalla's submission to the aforesaid contention is that while forwarding the affidavit to Kasim Master, respondent No. 3 had already stated in their letter dated 13-7-1996 addressed by the Attorney of respondent No. 3 to the Assistant Registrar as under :

"(1) We refer to the Form TM 56 dated the 5th July, 1995 forwarded to you by Registered A.D. post for extension of time by two months for filing evidence in support of the Opposition.

(2) Be pleased to take on file the affidavit of Mr. Kasim Master, duly Constituted Attorney of Burroughs Wellcome India Ltd. Regd. users of the trade mark ZOVIRAX in India support of the Notice of Opposition affirmed on 11th July, 1996. This affidavit is being as part evidence in support of the Opposition.

(3) Further evidence in support of the Opposition will also be filed shortly."

is further submitted that before forwarding the aforesaid affidavit, respondent No. 3 had already sent application for extension dated 5-7-1996 (Page 95) are by the petitioner had applied for extension of time of two months on the following grounds :

Draft affidavit is sent for approval to opponents in London.

(ii) Opponents are collecting the Registration Certificates of trade marks ZOVIRAX and ZOVIREX in several countries of the world.

(iii) Sales figures are also to be collected with documentary evidence.

(iv) Trade marks are used by Opponents for life-saving drugs.

(v) Public interest is paramount and purity of the register of Trade Marks must be safe guarded."

It is therefore, submitted by Mr. Daruwalla that merely because the Assistant Registrar did not pass any order of the application dated 5-7-1996 seeking extension of time for two months that by itself did not preclude the Assistant Registrar from subsequently entertaining the application of respondent No. 3 for asking the affidavit of Ms. Lesley Jane Edwards on record because the Registrar did have discretionary power to do so not merely in view of the words "unless the Registrar otherwise directs", in Rule 53(2) of the Rules but also in view of the express provision of Section 101 of the Act read with Rule 106 of the Rules which empower the Registrar upon his being satisfied that the circumstances are such as to justify the extension of time applied for, to extend the time for adducing evidence which had already expired earlier. It is further submitted that u/s 97(c) of the Act read with Rule 115, the Assistant Registrar also did have the power to review his communication dated 21-8-1997 whereby he had invited the attention of the applicant's attorney to Rule 54.

14. There is substance in the arguments of Mr. Daruwalla. In the first place, no order was passed earlier for rejecting the opponent's extension application dated

5-7-1996 and 18-9-1996. Hence it was open to the Assistant Registrar to grant those applications subsequently. Secondly, the Assistant Registrar had overlooked the statement made in the letter dated 13-7-1996 of the opponent forwarding the affidavit of Mr. Kasim Master that the said affidavit was part evidence and further evidence in support of the Opposition will also be filed shortly; but more than the above considerations what weighs with this court in rejecting the contention of the petitioner is the fact that even after the Assistant Registrar sent intimation to the petitioner inviting its attention to Rule 54 as far back as on 21-8-1996 the petitioner did not lead any evidence in support of its application under Rule 54 within two month from the date of receipt of letter dated 21-8-1996 from the Assistant Registrar. It is therefore, clear that the petitioner did not suffer any prejudice on account of the Assistant Registrar subsequently granting extension to respondent No. 3 for filing affidavit of Ms. Lesley Jane Edwards in October 1996. Different considerations might have arisen if the petitioner had adduced its evidence under Rule 54 within two months from the date of receipt of letter dated 21-8-1996 from the Assistant Registrar. Even otherwise no factual aspect or material has been brought to the notice of the Court to show that any prejudice had been caused to the petitioner on account of extension of time having been granted in favour of respondent No. 3 in the year 1996.

15. While it is true that the Registrar/Asstt. Registrar does have discretionary power to extend time for permitting the parties to lead evidence it does not mean that the said officer has any absolute unbridled power to grant such extension arbitrarily or in a capricious manner and, therefore, if the time is granted beyond reasonable limits, in the facts of a given case such orders can be interfered with. No such ground is made out in the instant case because on its own showing the petitioner had applied for registration of the trade mark in 1987 but moved the Registrar for advertisement of its application in 1995. Moreover, even after receiving the notice dated 21-8-1996 inviting its attention to Rule 54, the petitioner has not led any evidence under Rule 54 in the last one and a half years as noted above. It has also been indicated earlier that even after operation of fiction of deemed abandonment of the opposition under Rule 53(2), registration of the Trade Mark is not automatic and that either further evidence may be led by the applicant or other steps under Rule 54 have to be taken and hearing has to take place before the Registrar. The record shows that instead of taking such steps the petitioner has spent more time in raising technical pleas before the Assistant Registrar and before this court.

16. In view of the aforesaid discussion there is no substance in any of the contentions raised by the learned Counsel for the petitioner and the petition deserves to be dismissed.

17. The petition accordingly fails and is dismissed. Rule is discharged with no order as to costs. The ad-interim relief stands vacated.

At this stage, the learned Counsel for the petitioner prays that the ad-interim

relief granted earlier may be continued for some time to enable the petitioner to have further recourse in accordance with law. In the fact and circumstances of the case, ad-interim relief granted earlier shall continue for a period of four weeks from today.

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