

INTELLECTUAL PROPERTY APPELLATE BOARD
Guna Complex Annexe-I, 2nd Floor, 443 Anna Salai,
Teynampet, Chennai-600018

(CIRCUIT BENCH SITTING AT AHMEDABAD)

OA/2/2013/TM/AMD

(THURSDAY THIS THE 17th DAY OF DECEMBER, 2015)

HON'BLE SHRI. JUSTICE K.N.BASHA

... CHAIRMAN

HON'BLE SHRI SANJEEV KUMAR CHASWAL

... TECHNICAL MEMBER
(TRADE MARKS)

M/s Vardhman Trading,
Shop No.3,Kanak Chambers,
Celler, Madhopura Chowk,
Madhopura,Ahmedabad 380 004.

... Appellant

(Represented by Jagdish Roy Parashar)

Vs

1. M/s J.M. Spices Trader,
280-Katara Pedan,
Tilak Bazar, Delhi – 100 006.

... Respondent

2. The Registrar of Trade Marks,
Trade Marks Registry,
15/27, National Chambers,
Ashram Road, Ahmedabad 380 009.

(Represented by Mr. Rajendra H. Bhansali)

ORDER (No. 224/2015)

Hon'ble Shri Justice K.N.Basha, Chairman:

The order under challenge is dated 07.12.2011 passed by the Assistant Registrar of Trade Marks against the cancellation of the registration certificate No. 810509 under Class 30 in application No.1602046 filed by the appellant herein.

2. The appellant filed an application for registration of Trade mark 'MAX' (label) with device bearing application No.1602046 in class 30. On receipt of the application examination report was issued on 08.07.2008 to the appellant and a reply dated 15.07.2008 was given by the appellant. It is seen that the said application was purported to have been published in Trade Marks journal No.1402 but in fact the said application was not published in the said journal.

The said factor was brought to the notice of the second respondent as per the submission of the learned counsel for the first respondent. However, it is stated by the learned counsel for the respondent that the registration certificate was issued to the appellant on 19.03.2010. Thereafter, a reminder letter was sent by the first respondent to the second respondent on 26.04.2010. The first respondent also filed rectification application to registered mark No.1602046 in Class 30. As a result, the second respondent has issued notice under Section 57 (class 4) of the Trade Marks Act 1999. (hereinafter referred to as the Act.). The appellant has also filed a written counter submission to notice under section 57 in class 4 on 08.04.2011. Hearing notice was sent and heard on 13.04.2011. Notice of rectification was also issued to the appellant on 08.06. 2011. TM – 6 was filed by the appellant in rectification application on 01.08.2011 and the impugned order was also passed on 07.12.2011.

3. The appellant challenging the above said impugned order, wherein it is stated that the Impugned mark was published by the second respondent in the official journal entry No.1402. It is stated by the appellant that have incurred heavy expenses by printing the trade mark and after 90 days section 57, class(4) notice was served on them. It is stated by the appellant in the grounds they have also submitted their reply to Section 54, Class (4) notice. It is further stated in the grounds of appeal that the Assistant Registrar deleted the entry. The learned counsel for the appellant would contend that as a matter of fact the advertisement was effected in the Trade Mark Journal as per the procedure contemplated under Section 20 (1) of the act as per the instruction of his client namely the appellant. Reply was also given to the Section 57 in Class 4 notice and the same was not considered and as such the impugned order was passed in violation of principles of natural justice. The learned counsel for the first respondent on the other hand would contend that there is no infirmity or illegality in the Impugned Order. The learned counsel has also produced a list of dates and events and correspondence copies of the letters submitted by the first respondent to the Registrar. It is contended that the Registrar has clearly stated due to error in the computer, it was wrongly shown to be published in the Journal

No. 1402 and as a matter of fact, it was not at all published. It is submitted that by initiating action on them by bringing in the same to the knowledge of the Registrar and also by filing rectification application, the truth has come out about the non-compliance of the mandatory provision under Section 20 class (1) of the Act. It is contended that no prejudice would be caused to the appellant as he has been given opportunity to agitate and proceed with their application afresh in accordance with law.

4. We have carefully considered the rival contentions of either side and perused the original records and as well as the grounds of appeal and the Impugned Order.

5. At the outset, we are constrained to state that the appellant has not approached this Bench by filing this appeal with clean hands. It is very unfortunate to note that even before us, the appellant is very well present would state before us that he was informed by his Chartered Accountant about the publication. It is also very unfortunate even for the learned counsel for the appellant, who is the officer of the court is not inclined to assist the court by bringing the truth to the court and he is going on arguing the Section 20 Class (1) in spite of the specific finding by the Registrar to the effect that due to computer error it was wrongly shown to have been advertised. It is also pertinent to note that even the first respondent brought the said factor to the notice of the Registrar and thereby the appellant was given opportunity and appeared before the Registrar and gave the written submissions justifying his stand. It is a clear case of making false statement before the authority namely Assistant Registrar as well as before this Bench IPAB warranting to take appropriate action in accordance with law.

6. However, the learned counsel expresses his regret before us for the conduct of the appellant and as well as in respect of the unpleasant consequences of events. Therefore, we are not inclined to take any drastic action in this matter.

7. It is seen that there is absolutely no infirmity or illegality and there is a clear violation of mandatory provision under section 20 class (1) as pointed out by the Assistant Registrar and there is no infirmity or illegality in the Impugned Order and even the Registrar has given an opportunity to the appellant, considered the application no. 1602046 in Class 30 in accordance with law and as such no prejudice would be caused to the appellant. Accordingly, the appeal is hereby dismissed. No order as to costs. It is open to the respondent to raise all contentions in respect of rectification application and equally it is also open to the appellant to make his contentions.

(SANJEEV KUMAR CHASWAL)
TECHNICAL MEMBER

(JUSTICE K.N.BASHA)
CHAIRMAN

srk

Reportable: Yes/No