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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8977/2008

MAA KAMAKHYA DARBAR FRAGRANCES INDIA Petitioner
Through Mr. Sushant Singh, Advocate.

Versus

SHANTI DHOOP KARYALA AND ANR. Respondent
Through Mr. M.K. Miglani, Advocate.
Mr. Sandeep Aggarwal, Adv. for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

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24.11.2009

1. Maa Kamakhya Darbar Fragrances India, have filed the present writ petition against the order dated 4th December, 2008, wherein it was held that the application filed by them for registration of the trade mark in class-3 was treated as abandoned and the opposition filed by the respondent No.1 Shanti Dhoop Karyala as abated and closed. The impugned order, records that the hearing was held on 20th November, 2008.

2. The grievance raised by the petitioner is that they were not informed about the hearing fixed on 20th November, 2008, and therefore the respondent registrar was not justified in holding that the petitioner had abandoned their application. On the other hand, the stand taken by the respondent No.1, Shanti Dhoop Karyala and the

respondent authorities is that a notice for hearing held on 20th November, 2008, was sent to M/s. Paliwal and Company, attorneys of the petitioner and therefore impugned order is just and valid.

3. The petitioner has filed on record letter dated 8th November, 2007, written to the Registrar of Trade Marks, Dwarka, New Delhi, intimating that there was change of Advocate representing the petitioner and henceforth, the petitioner would be represented by a different Advocate, whose name and address was mentioned in the letter. A general power of attorney in favour of the Advocate was also enclosed with the letter. The receipt of the said letter is not denied by the Registrar of Trade Marks. There may have been lapse on the part of the petitioner or his attorney in non-filing of requisite Form No. TM-7 and TM-16, but this by itself, I do not think, justifies dismissal of the application for registration of trade mark, which had remained pending since 1999 on the ground that the petitioner had abandoned their application. The petitioner and their advocate were not informed that the letter was not sufficient and forms were required to be submitted. No correspondence or warning was given.

4. It is noticed that the petitioner had written a letter of protest dated 22nd April, 2008, to the Controller General of Patents, Designs and Trade Marks, Mumbai stating, inter alia, that the last date of hearing was on 3rd April, 2006 and since then no hearing had been fixed. Request was made that the Registrar, Trade Marks, Delhi should be asked to fix a hearing in the matter. Pursuant to this letter, the Under Secretary, Government of India had written letter dated 29th April, 2008 to the Controller General

of Patents, Designs and Trade Marks, Mumbai. Another letter dated 12th August, 2008 was written by the Assistant Registrar of Trade Marks to the Deputy Registrar of Trade Marks, Dwarka, New Delhi enclosing therewith the petitioner's letter dated 22nd April, 2008, with a request that the application for registration along with opposition/rectification should be posted for final hearing at the earliest. The aforesaid letter clearly indicates that the petitioner had made a request for hearing before the Registrar, Trade Marks, Dwarka, New Delhi. The contention of the counsel for the respondent No.1 that the petitioner had not requested for personal hearing in terms of Section 21(4) of the Trade Marks Act, 1999, is therefore not correct. In any case, the application filed by the petitioner for registration of trade mark has been dismissed on the ground that no one had appeared on behalf of the petitioner on 20th November, 2008 and therefore the application is deemed to be abandoned.

5. Counsel for the respondent No.1 submitted that the impugned order is appealable and therefore the present writ petition should not be entertained in view of alternative remedy. The present case is one wherein notice of hearing was not served on the petitioner or their representative. Principles of natural justice have been violated and personal hearing was not granted. The writ court can therefore interfere, even if alternative remedy is available to the petitioner. Moreover, the present writ petition has remained pending in the Court for about one year.

6. In view of the aforesaid peculiar facts, the impugned order dated 4th December, 2008 is set aside and the matter is remanded back to the Registrar, Trade Marks,

Dwarka, New Delhi. The parties will appear before the Registrar on 17th December, 2009, when further date of hearing will be fixed. In the facts and circumstances of the case, there will be no order as to costs.

SANJIV KHANNA, J.

NOVEMBER 24, 2009
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