

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.08.2014

+ **W.P.(C) 38/2012**

DANDI SALT PVT LTD

..... Petitioner

versus

UOI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr S.K. Bansal, Mr Ajay Amitabh Suman and
Mr Santosh Kumar.

For the Respondents : Mr Amit Mahajan with Mr Nitya Sharma for
CGSC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has, by way of this petition, called into question orders dated 30.05.2011 and 24.08.2011 passed by the Deputy Registrar of Copyrights (Copyright Board).

2. Briefly stated, the objection filed by the petitioner against the application for registration of the copyright filed by respondent no.2 was rejected by the Registrar of Copyrights. The rejection of objection was challenged by the petitioner before the Copyright Board in an appeal under Section 72(1) of the Copyright Act, 1957, albeit, beyond the period of three months. The petitioner had also filed an application for condonation of delay. By an order dated 30.03.2011, the appeal preferred by the petitioner was dismissed by the Copyright Board on the ground that it was belated

and beyond the period of three months prescribed under section 72(1) of the Act, 1957 (hereinafter referred to as the 'Act').

3. The petitioner was aggrieved by the dismissal of the appeal and filed an application seeking a review of the order dated 31.03.2011 alleging that its application for condonation of delay was not considered by the Copyright Board. By an order dated 30.05.2011, the Deputy Registrar of Copyrights dismissed the said application of review on the ground that the same is not maintainable. The petitioner did not accept this decision and once again applied for review to be placed before the Copyright Board. The Deputy Registrar, by its letter dated 24.08.2011, once again rejected the petitioner's application stating that the matter was re-examined and the order dated 30.05.2011, which now was referred to as "a decision taken by the Board", was re-affirmed. It was further stated that there is no provision of appeal/revision under the Act and the rules made thereunder against the order passed by the Copyright Board in an appeal.

4. The controversy in the present case is, essentially, whether an application for review of an order passed by the Copyright Board lies in the given facts and circumstances of the case. And, whether the Registrars (Copyright Board) would have the jurisdiction to reject an application of review preferred before the Copyright Board.

5. Indisputably, an application to the Copyright Board can only be decided by the said Board and not by the Registrar. Whilst, the Registrar of the Copyright Board would, undoubtedly, have the power to decide whether an application is in the correct form, complete in all particulars and

otherwise competent, but the merits of the said application cannot be adjudicated by the Registrar.

6. The application filed by the petitioner seeking review of the order passed by the Copyright Board, raises several contentious issues including whether the Board could review its order rejecting an appeal as belated. And, whether these issues could only be, in the first instance, considered by the Copyright Board and not by the Registrar. The learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of **Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd.:** (2005) 13 SCC 777 and has referred to paragraph 19 of the said decision which read as under:-

“19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an

error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal* it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”

7. The Supreme Court has explained that although it is a settled law that in the absence of an express power of review, the Tribunal would not have the power to review its own decisions, however, the Supreme Court has held that there is a distinction between the power to review a decision on merits and to correct a procedural infirmity. In cases where there is a procedural infirmity which goes to the root of the proceedings, the Tribunal would have an inherent power to review the same. The moot question that arises is, whether non-consideration of an application for condonation of delay amounts to review that falls into the category of a procedural review as explained by the Supreme Court in the aforementioned decision. Obviously, this question would in the first instance, be required to be considered by the Copyright Board.

8. The learned counsel for the respondents submits that a Single Judge of this Court, by an order dated 04.01.2012 in W.P. (C) No.35/2012, has concluded the issue against the petitioner. The learned counsel has handed over a copy of the said order which indicates that whilst the learned Single Judge held that the Registrar would not have any power to reject an application made to the Copyright Board, the learned Single Judge also concluded that the said Board would not have any power to review its decision made on merits.

9. The said order dated 04.01.2012 also supports the view that the Registrar of the Copyright Board does not have the power to consider an application made to the Copyright Board and, thus, had committed an error in passing the order 30.05.2011. Although, in that case the learned Single Judge held that the Copyright Board cannot review its decision, the same was in the context where the decision of the Board was found to be on merits and not on account of a fundamental procedural infirmity. The question would still remain, whether dismissal of an appeal on the ground of delay or without considering an application on record, constitutes a procedural error.

10. In this view, the impugned orders dated 30.05.2011 and 24.08.2011 are set aside and it is directed that the application for review filed by the petitioner be placed before the Copyright Board for an appropriate decision therein. I am also persuaded to pass this order as no prejudice is likely to be caused to any party by adopting such procedure. The parties would be at liberty to take such recourse as available in law against any decision that may be passed by the Copyright Board.

11. It is also necessary to clarify that nothing stated in this order should be construed as expression of opinion on the question whether condonation of delay is a procedural matter or on the merits of the controversy before the Copyright Board.

12. Accordingly, the present petition stand disposed of in terms of the above directions.

AUGUST 06, 2014
pkv

VIBHU BAKHRU, J

