

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 17608 of 2013 (A)

PETITIONER(S):

**KING TONY TOOLS CO.LTD., OF NO.66,
ALLEY 65, LANE 270, SEC.2,
SINAN ROAD, WURIH DIT., TAICHUNG CITY 41466,
TAIWAN (R.O.C),
REPRESENTED BY ITS CONSTITUTED ATTORNEY
BENNY BABU OF S/15 EMPIRE BUILDING,
OLD RAILWAY STATION ROAD, COCHIN - 682 018.**

BY ADV. SRI.JOHN MATHEW

RESPONDENT(S):

- 1. THE REGISTRAR OF TRADEMARKS,
TRADEMARKS REGISTRY, INTELLECTUAL PROPERTY BHAVAN
PLOT NO.32, SECTOR, 14
DWARAKA, NEW DELHI - 110 075.**
- 2. THE REGISTRAR OF TRADEMARKS,
TRADEMARKS REGISTRY, BOUDHIK SAMPADA BHAVAN, S.M.ROAD,
ANTOP HILL, MUMBAI - 400 037.**
- 3. THE CONTROLLER GENERAL OF PATENTS,
DESIGNS AND TRADE MARKS,
MINISTRY OF COMMERCE AND INDUSTRY,
BOUDHIK SAMPADA BHAVAN, S.M.ROAD, ANTOP HILL,
MUMBAI - 400 037.**
- 4. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF INDUSTRIAL POLICE & PROMOTION,
MINISTRY OF COMMERCE & INDUSTRY, UDYOG BHAVAN,
NEW DELHI - 110 107.**
- 5. SIX O TU INVESTMENTS & TRADERS PRIVATE LIMITED,
423, SHAH & NAHAR, A-2 BUILDING
4TH FLOOR, LOWER PAREL (W), MUMBAI - 400 013.**

R1-R4 BY ADV. SRI.N.NAGARESH, ASG OF INDIA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 17608 of 2013 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. THE TRUE PHOTOCOPY OF THE POWER OF ATTORNEY
DATED 15.05.2013.**

**EXHIBIT P2. THE TRUE PHOTOCOPY OF THE LETTER DATED 10.08.2009
WITHDRAWING TRADEMARK APPLICATION NO.1540075.**

**EXHIBIT P3. THE TRUE PHOTOCOPY OF THE LETTER DATED 12.08.2009 REQUESTING
TO WAIVE OBJECTION IN RE TRADEMARK APPLICATION NO.1553970.**

**EXHIBIT P4. THE TRUE PHOTOCOPY OF THE LETTER DATED 01.06.2010 REQUESTING
TO CORRECT THE ERROR.**

**EXHIBIT P5. THE TRUE PHOTOCOPY OF THE EMAIL COMMUNICATION
DATED 08.11.2010.**

**EXHIBIT P6. THE TRUE PHOTOCOPY OF THE EMAIL COMMUNICATION
DATED 09.06.2011.**

**EXHIBIT P7. THE TRUE PHOTOCOPY OF THE COMMUNICATION DATED 03.12.2010
FROM RESPONDENT NO.3.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.17608 OF 2013
.....

Dated this the 16th January, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

"i) issue a writ of mandamus or any other appropriate writ or order directing the 1st respondent to correct the wrong entry in the official records showing the withdrawal of trademark application No.1553970

ii) issue a writ of mandamus or any other writ, order or direction directing the 2nd respondent to act in accordance with Exhibit P2 to nullify trademark application No.1540075, so that it will not pose a threat to the smooth movement of the petitioner's trademark application No.1553970 to registration.

iii) such other reliefs as this Hon'ble Court deems fit to the facts and circumstance of the case.

iv) Costs."

2. The learned Counsel for th petitioner submits that, with regard to the application preferred by the petitioner, an error was pointed out with reference to the trade mark of another institution, i.e. of another establishment of the 5th respondent

But subsequently, as per Ext.P2 dated 10.08.2009, the 5th respondent withdrew their Trade Mark application and as such there is no hurdle in considering the Trade Mark application preferred by the petitioner. It was accordingly, that Ext.P3 was submitted on 12.08.2009. Though several communications followed in between, nothing has transpired in the positive and hence this writ petition .

3. Heard the learned Standing Counsel for the respondents 1 to 4. Despite completion of service of notice, the 5th respondent has not chosen to turn up before this Court and hence it has to be reasonably presumed that he has absolutely no objection in causing the application to be considered and finalised. It is also relevant to note that, though the matter is pending right from 15.07.2013, no counter affidavit has been filed so far.

4. In the said circumstance, there will be a direction to the first respondent/the Registrar of Trademarks & Others to correct the wrong entry in the official records, showing the withdrawal of the Trade Mark Application of the 5th respondent, which shall be done at the earliest, at any rate, within one month

from the date of receipt of a copy of the judgment . The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

The writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE

The word '5th respondent' occurring in the 4th line of the 4th paragraph of the judgment is corrected and substituted as 'petitioner', as per order dated 26.02.2015 in I.A.No.2596/2015 in W.P.(C)No.17608 /2013.

Sd/- Registrar (Judicial)