

In the High Court of Judicature at Madras

Dated: 02.07.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition No. 3851 of 2015

Jones Investment Co. Inc.
Now trade marks assigned to:
Jones Apparel (US) LLC
of 1007 Orange Street
(Earlier at 300 Delaware Avenue)
Wilmington, DE 19801
United States of America
rep. by its duly constituted attorney
Ms. Sudarshana Sen-Mitra
14/2, Palm Avenue, Calcutta-700019
West Bengal, India. ... Petitioner

vs.

1. Intellectual Property Appellate
Board (IPAB), Annexe I
Guna Complex, II Floor
Anna Salai, Teynampet
Chennai - 600 018.
2. Deputy Registrar of Trademarks
Office of the Trade Marks Registry
Intellectual Property Building
GST Road, Guindy, Chennai-32.
3. Mr.Nagarajan Srinivasan
Trading as Vishnupriya Hosiery Mills
48, Kumaran Street
Surampatti, Erode 638 009. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the 1st respondent in Order No.24 of 2014 dated 24th February 2014 passed by the Intellectual Property Appellate Board, Respondent No.1 herein in Appeal No.OA/48/2010/TM/CH, confirming the order of the 2nd respondent dated 9th March 2010 passed in Trademark Opposition No.MAS-59456 to Trademark Application No.621998 in class

25 filed by the 3rd respondent and to quash the said orders as unconstitutional, contrary to law and erroneous.

For Petitioner : Mr. Perumbulavil Radhakrishnan
For Respondents : Mr. Rajesh Ramanathan for R3
Mr. Venkatesan Rajamani
Examiner of Trade Marks, Chennai.

O R D E R

(Made by The Hon'ble The Chief Justice)

The writ petitioner seeks to impugn the order of the Intellectual Property Appellate Board (IPAB) dated 24.02.2014, dismissing the appeal against the order pronounced by Mr. Dharam Singh, the then Deputy Registrar of Trade Marks/respondent no.2. What shocked our judicial conscience was the submission of the learned counsel for the petitioner based on the failure of the second respondent to appreciate the evidence on account of the fact that though the orders were reserved on 08.03.2004, they were pronounced on 09.03.2010, after completing six years of a hiatus period. Coupled with the submission was the plea that the IPAB did not discuss the evidence and thus, there has been non-appreciation of the evidence.

2. We had directed the records to be produced by the Registrar of the second respondent, (Mr. Dharam Singh has since retired from office) or to be produced by the IPAB, depending upon where the records were. We further called upon the particulars of all orders pronounced from 2013 onwards, giving their dates when they were reserved, along with cases in which orders have been reserved and are awaiting judgments. This direction was necessitated on account of our concern, whether the malady noticed was peculiar to this case alone or there was a larger problem at hand.

3. In this behalf, the current Deputy Registrar of Trade Marks Mr. V. Natarajan, being by designation, the second respondent, has filed an affidavit affirmed on 30.06.2015. It emerges from the affidavit that during the period from 01.01.2013 to 31.05.2015, out of 383 opposition cases concluded, orders were passed in 318 cases within a month, in 52 cases within six months and in 13 cases within nine months. Thus, fortunately, the larger picture on this aspect is not alarming and it is only in 13 cases where there is an element of some delay.

4. The affidavit also affirms that there are no large number of cases awaiting judgment and an endeavour has been made to clear the pendency of about 24000 cases, the figure pre 2013. More than about half of these cases of that vintage have been disposed of and endeavour has also been made to dispose of all the remaining cases.

5. We may notice that the Honourable Supreme Court has emphasized the importance of pronouncement of judgments in time, making observations in *Anil Rai vs. State of Bihar*, reported in (2001) 7 SCC 318. The observations are to the effect that while justice delayed is justice denied, justice withheld through long periods of reserved judgments is even worse than that. This is predicated on the premise that while delay in justice may be occasioned on account of various factors like inadequate number of Judges, insufficiency of infrastructure, strike of lawyers and circumstances attributable to the State, which is understandable, but once the entire process of participation in the justice delivery system is over and the only thing to be done is the pronouncement of judgment, no excuse can be found to further delay adjudication of the rights of the parties. The Honourable Supreme Court thus found it appropriate to lay down the following guidelines regarding pronouncement of judgments and observed that they shall be strictly followed and implemented, considering them as self-imposed restraints.

"(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned.

(ii) That Chief Justice of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such

application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as deems fit in the circumstances."

6. The Tribunals are specialised forums to look into a particular subject matter and thus, if one may say, are expected to adhere to the aforesaid even more than of a Court, which is dealing with innumerable kinds of subjects and litigations. Thus, what applies to a Court would equally apply to the Tribunals and it is necessary to circulate the aforesaid judgment to all persons performing judicial functions in the respondent-Tribunal to ensure due compliance. We are informed that a Circular qua pending cases has been issued and that needs to be reiterated, apart from the above said exercise. The Opposition Cases would also thus be dealt with similarly which are subject matter of appeals before the IPAB. We hope that this would take care of the larger issue.

7. Insofar as the present matter is concerned, the only redeeming factor is that the person who reserved the order pronounced it ! However, the fact remains that this came after six years, and there is no explanation available on record for this inordinate delay. Suffice to say that neither memory nor records can fully appreciate the controversy subject matter of the arguments which took place six years ago.

8. We may notice that the learned counsel for the third respondent wanted to file counter-affidavit on merits, but we put to him that we are not really examining the controversy on merits and our setting aside the order of the second respondent is solely on account of the inordinate delay in pronouncing the judgment, without commenting on the merits of the controversy.

9. We have, thus, no option but to set aside the order dated 09.03.2010 of the second respondent solely on the ground of extraordinary delay in pronouncing the judgment after six years. Consequently, the order of the IPAB dated 24.02.2014 would also have to go. We are of course conscious of the fact that this once again sets the clock back, but there is no other option in the given circumstances.

10. Taking into consideration the aforesaid facts, we expect the second respondent to dispose of the Opposition Application within a period of two months from the receipt of a copy of this order, based on the records already available and the submissions of the learned counsel for the parties.

11. The writ petition is accordingly disposed of, leaving the parties to bear their own costs.

ATR

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Copies to;

1. Intellectual Property Appellate
Board (IPAB), Annexe I
Guna Complex, II Floor
Anna Salai, Teynampet
Chennai - 600 018.

2. Deputy Registrar of Trademarks
Office of the Trade Marks Registry
Intellectual Property Building
GST Road, Guindy, Chennai-32.

+ 2 ccs to Mr.Perumbulavil Radhakrishnan, Advocate SR 32909

+ 1 cc to Mr.Rajeshramanathan, Advocate SR 32784

rv(co)
prk6/7

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W.P. No. 3851 of 2015

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