

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.12827 of 2012

M/s.Mahavir Home Appliances
An Indian Partnership Firm
rep. by its Partner Devichand S.Jain,
No.134, Tulsi Complex,
Sultanpet,
Bangalore-560 053. .. Petitioner

-vs-

- 1.The Intellectual Property Appellate Board,
Guna Complex, Annexe-I,
Second Floor,
No.443, Anna Salai,
Tenampet,
Chennai-600 018.
- 2.The Registrar of Trade Marks,
Trade Marks Registry,
IPR Building, GST Road,
Guindy,
Chennai.
- 3.Rallifan Limited,
No.4, Fairlie Place,
Kolkata-700 007,
rep. by its Director. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the first respondent relating to order dated 20.04.2012 made in ORA/105/2006/TM/CH and ORA/90/2007/TM/MUM, quash the same and consequently direct the second respondent to retain the registration of the trade mark RALLY under registered trademark No.1213190 in Class 11 in the name of the writ petitioner.

For Petitioner : Mr.P.S.Raman
Senior Counsel
for
M/s.Pushpa Menon

For Respondents : Mr.I.Madanagopal Rao
SCGSC for R1 and R2

Mr.A.A.Mohan for R3

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

In pursuance to our last order, no affidavit of respondent No.2 is on record, though the learned Senior Counsel for the petitioner states that he has received a copy of the same, while the learned counsel for respondent No.3 states that he has not received the copy.

2. A copy of the affidavit filed by respondent No.2 has been shown to us, which affirms that the registration of the associated marks under No.195299 and 195300 were valid upto 04.04.2002 and thereafter, no request on form TM-12 with the prescribed fee in accordance with Rules 63 and 64 of the Trade Marks Rules, 2002 are filed for renewal of registration, as per the electronic database records and hence, registration of the associated trademarks are not valid and existing. It also seeks to enclose the relevant records as Annexure "A".

3. The learned counsel for respondent No.2 to take steps to bring this affidavit on record and also supply a copy to the learned counsel for respondent No.3 within two days.

4. The learned counsel for respondent No.3, faced with the aforesaid position and in the context of what was contended before us by the learned Senior Counsel for the petitioner on 21.09.2015, submits that if this Court is inclined to remit the matter back to the Intellectual Property Appellate Board in view of this position, it may do so rather than giving a further date for hearing.

5. We may notice that in paragraph 15 of the impugned order of the Intellectual Property Appellate Board, it was observed as

under:-

"15. In the present case the assignment was of the only mark that was alive, the registered proprietor had not renewed the other two marks and had allowed them to lapse. So the assignment was of the only mark that was alive. A partial assignment is frowned upto because it would run counter to the principle, one source, one mark, and would injure public interest. But in this case the other marks had been expunged, this mark alone had been renewed and kept alive. So the S.44 objection that assignment of associated marks can only be as a whole and not separately is rejected."

6. In the aforesaid context, a submission had been made by the learned Senior Counsel for the petitioner that the impugned order is predicated on the fact that the associated marks of respondent No.3 were not renewed, thus non-suiting the petitioner. He, thus, submitted that it is found as per the extract of Trademarks Journal bearing No.1112 dated 01.10.1995, the associated marks were in fact renewed from 02.04.1995 for seven years.

7. The stand now taken by respondent No.2 thus supports what is the contention of the petitioner and thus, unfortunately the matter would have to be re-examined in the context of the new factual position which has emerged before us, as one of the basis of the order itself which is now found to be different is what persuaded the Intellectual Property Appellate Board. We are thus left with no other option except to set aside the impugned order and remit the matter back to the Intellectual Property Appellate Board for reconsideration.

8. The learned counsel for respondent No.3 submits that the issue is quite old and thus the matter may be treated on some priority. All we can say that is taking into consideration that the matters pertain to 2008/2011/2006, priority be given to this matter keeping vintage 2006 in mind.

9. The writ petition, accordingly, allowed leaving the parties to bear their own costs.

Sd/-
Assistant Registrar (CO)

True Copy

Sub Assistant Registrar

To

1.The Intellectual Property Appellate Board,
Guna Complex, Annexe-I,
Second Floor,
No.443, Anna Salai,
Tenampet,
Chennai-600 018.

2.The Registrar of Trade Marks,
Trade Marks Registry,
IPR Building, GST Road,
Guindy,
Chennai.

3.Section Officer,
VR Section,
High Court, Madras -104

+1cc to Mr.Pushpa Menon, Advocate Sr.59775
+1cc to Mr.Arun Mohan, Advocate Sr.59998
+1cc to Mr.J.Madanagopal Rao, Advocate Sr.59825

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sv[co]
srg 4/11/2015

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