

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO.1259 OF 2015**

The Court Receiver, High Court, Mumbai      ...Petitioner  
vs.  
The Registrar of Trade Marks and Another      ...Respondents

Mr. H.W. Kane a/w. Mr. Nikhil Sharma i/b. W.S. Kane & Company, for the Petitioner.

Mr. Advait Sethna a/w. Mr.D.P. Singh and Mr. Raju Thakkar, for Respondent Nos. 1 and 2.

Dr. M.S. Deshpande, the Court Receiver present.

Mrs. Kavita Ambekar, 1<sup>st</sup> Asstt. Court Receiver present.

CORAM : SHANTANU KEMKAR &  
MAKARAND KARNIK, JJ.

DATE : OCTOBER 04, 2016

P.C.:

- . Parties through their counsel.
2. Feeling aggrieved by the action of Respondent No. 1 of removal of the Petitioner's registered trade marks bearing registration numbers 239072, 490709, 743750, 443332, 443331, 522080, 522076, 743751, 444586, 444587, 222677, 344905, 561795, 273495 and 258918 and refusing renewal of the same, the Petitioner has approached this Court by filing this Petition under Article 226 of the Constitution of India.

3. According to the Petitioner, before taking the impugned action, Respondent No. 1 has failed to comply with the provision of Section 25(3) of the Trade Marks Act, 1999 (in short "*the Act*") read with Rule 64(1) of the Trade Marks Rules, 2002 (in short "*the Rules*"). According to the Petitioner, before expiration of the last registration of the Petitioner's trade marks, the Registry (Respondent No. 1) did not send notices in the prescribed manner to the Petitioner of the date of expiration and the condition as to payment of fees upon which the renewal of registration may be obtained. In the absence of compliance of the mandatory provision under Section 25(3) of the Act, according to the Petitioner, the impugned action of Respondent No. 1 is liable to be quashed. In support of his submission, the learned counsel for the Petitioner has placed reliance on the judgment passed by this Court in the case of "CIPLA Limited vs. Registrar of Trade Marks and Another"<sup>1</sup>.

4. On the other hand, the learned counsel appearing for Respondent No. 1 has supported the impugned action and has contended that prior to taking impugned action, the compliance of

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<sup>1</sup> MIPR 2013 (3) 0129.

Section 25(3) of the Act and Rule 64(1) of the Rules has been done and the Petitioner was issued various O-3 notices and letters in regard to the proposed action.

5. Having considered the submissions made by both the parties and having gone through the documents filed by both, it is clear that the Respondent No. 1 has not placed on record a single O-3 notice but attempted to show that there is compliance of Section 25(3) of the Act and Rule 64(1) of the Rules, on the basis of the copies of some letters by which the Petitioner was informed that O-3 notices have already been sent. In the absence of any reliable evidence in support of the stand taken by the Respondent No. 1 that the O-3 notices were sent, we are not able to accept the contention made by the learned counsel for Respondent No. 1 that the O-3 notices were duly sent. We also find that neither there is documentary evidence in respect of the contention that O-3 notices were sent nor there is evidence of receipt of the same by the Petitioner.

6. In these peculiar facts and circumstances of the case, we are of the view that there is total non compliance of the provision of

Section 25(3) of the Act read with Rule 64(1) of the Rules before taking impugned action against the Petitioner. Our view finds support from the law laid down by the Division Bench of this Court in para 5 to 7 in the case of **CIPLA Limited**(supra).

7. In the circumstances, taking into consideration the entire facts and circumstances of the case, we are of the view that the impugned action of Respondents is liable to be and is hereby quashed.

8. Accordingly, the Petition is allowed. The Respondent No. 1 is directed to restore and renew the Petitioner's trade marks described in Exhibit A to the Petition.

9. No order as to the costs.

(MAKARAND KARNIK, J.)

(SHANTANU KEMKAR, J.)