

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM :

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.2760 of 2010

S.K.Janimiya
Trading as M/s.Crescent Pharmaceuticals,
at H.No.10-B, Street No.2, Kakatiya Nagar,
Habsiguda, hyderabad - 500 007
now in the name of S.K.Janimiya
trading as M/s.Crescent Therapeutics Ltd.,
at Crescent Towers, 4-7-11/4/B,
Raghavendra Nagar,
Nacharam, Hyderabad 500076. Petitioner

Versus

- 1.Mr.Narender Pal
trading as M/s.Psychoremedies
at Plot No.5 (First Floor) Barewal Road,
Behind PNB, Ludhiana, Punjab.
- 2.Deputy Registrar of Trade Marks,
Office of the Trademarks Registry
Intellectual Property Rights Buildings,
Industrial Estate, SIDCO RMD,
Godown Area, G.S.T.Road, Guindy,
Chennai 600 032.
- 3.Intellectual Property Appellate Board,
Guna Complex, Annex -I,
2nd Floor, 443, Anna Salai,
Teynampet, Chennai 600 018. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the Intellectual Property Appellate Board, Chennai dated 21.08.2009 made in OA/23/2008/TM/CH arising out of appeal filed by the petitioner against the order dated 13.12.2007 of the 2nd respondent allowing opposition No.MAS- 163030 filed by the respondent No.1 and quash the same by allowing the application

filed by the petitioner for registration of the trademark OLAPIN under No.1013028 in Class 05 under the provisions of Trade Mark Act 1999.

For Petitioner : Mr.S.Subashiny

For Respondents : Mr.P.C.N.Ragupathy for R.1

O R D E R

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

We have heard the learned counsel for the parties at length. There is little doubt that the petitioner has prosecuted the case in a lackadaisical manner. The consistent stand earlier was that they were proposing to use the Trade Mark, which is in terms of the application filed by the petitioner on 31.05.2001. Even the notice issued by the respondent did not result in disclosure of any relevant document or a contrary plea that they had already commenced business. It is only through an application filed under Form TM-16 for the first time on 10.11.2004 that they sought to change the status of user as one prior to the first respondent.

2. Normally in matters of pleadings and amendments thereof, a broader view is required to be taken. However, the conduct of the petitioner has been such that the apprehension of the respondent No.1 cannot be said to be unjustified.

3. It is however also conceded that the applications filed by the petitioner opposing the registration of the Trade Mark of the first respondent is still pending consideration. Not only that, the other aspect is that the finding recorded in the impugned order by the IPAB that no documents had been filed by the petitioner is not correct. These documents, however, would require to be looked into very carefully in the background of the stand taken by the petitioner for four years and that stand cannot be simply wished away by the amendment.

4. Subject to our aforesaid observations, it is agreed that the impugned order of the IPAB be set aside and the matter remitted back to the IPAB to be examined in the context of the documents placed on record by the petitioner. The IPAB may also take evidence, as required.

5. In view of this unnecessary prolonged litigation on account of the negligent conduct of the petitioner, we burden

the petitioner with costs of Rs.1 lakh to be paid to the first respondent within a period of one month from today.

6. The writ petition is allowed on the aforesaid terms.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ksr

To

1.The Deputy Registrar of Trade Marks,
Office of the Trademarks Registry
Intellectual Property Rights Buildings,
Industrial Estate, SIDCO RMD, Godown Area,
G.S.T.Road, Guindy,
Chennai 600 032.

2.The Registrar,
Intellectual Property Appellate Board,
Guna Complex, Annex -I, 2nd Floor,
443, Anna Salai,
Teynampet, Chennai 600 018.

+1cc to Mr.Arun C.Mohan, Advocate, S.R.No.17671

W.P.No.2760 of 2010

SKV(CO)
CA(05/04/2016)

सत्यमेव जयते

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