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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6562/2012 & CM Appl. 17362/2012

GURUJI ENTERPRISES PVT LTD Petitioner
Through: Mr. Sanjeev Singh, Adv.

versus

UNION OF INDIA AND ANR Respondents
Through: Mr. Sanjeev Narula, CGSC with Mr.
Ajay Kalra and Ms. Meha Rashmi, Advs. for UOI

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Date of Decision: 20th January, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petitioner by way of the present writ petition challenges the removal of the trade mark 'GURUJI' that was initially registered in petitioner's favour on the ground that no mandatory prior notice in 'Form O-3' was issued to it.
2. Learned counsel for the petitioner submits that under Section 25(3) of the Trade Marks Act, 1999 (for short 'the Act') read with Rules 64 to 66 of The Trade Mark Rules, 2002 (for short 'the Rules'), it was mandatory on the part of the Registrar of Trade Marks (for

short 'the Registrar') to send a notice prior to removal of the petitioner's trade mark.

3. In the counter affidavit, it has been stated by the respondents that the registration of the petitioner's trademark 'GURUJI' lapsed on 01st April, 2008. It is further stated that as per the official records, the 'Form O-3' notice was generated in the electronic form and sent by post on 28th February, 2008 in accordance with Section 25(3) of the Act read with Rule 64 of the Rules.

4. A copy of the 'Form O-3' notice sent to the petitioner has been annexed as Annexure -A to the counter affidavit.

5. Learned counsel for the respondents also raises a plea that the present writ petition is not maintainable as the petitioner has an alternative effective remedy by way of an appeal under Section 91 of the Act.

6. In rejoinder, learned counsel for the petitioner relies upon a Division Bench judgment of the Bombay High Court in ***Cipla Limited vs. Registrar of Trade Marks and Anr., 2013 (56) PTC 217*** wherein it has been held that if a trademark is removed without following the provision of Section 25(3) of the Act, then the decision of removal is void.

7. In the opinion of this Court, it was mandatory on the part of the petitioner to have renewed its trade mark from the date of its expiration. It was equally mandatory on the part of the Registrar to send a notice to the petitioner in 'Form O-3' prior to removing the petitioner's trade mark from the Register.

8. Since, in the present case, it has been categorically stated in the counter affidavit that the 'Form O-3' notice was generated in electronic form and was sent by post on 28th February, 2008, this Court is of the view that the Division Bench judgment of the Bombay High Court in ***Cipla Limited***(supra) offers no assistance to the petitioner.

9. Though learned counsel for the petitioner has contended that the 'Form O-3' notice was never received by the petitioner, yet this Court is of the view that any document sent by the Registrar would be deemed to have been made, served, left or sent at the time when the letter containing the same was delivered in the ordinary course of post in view of Rule 15 of the Rules. The relevant portion of the said Rule is reproduced hereinbelow:-

“15. Service of documents.-

- (1) All applications, notices, statements, papers having representations affixed thereto, or other documents authorized or required by the Act or the rules to be made, served, left or sent, at or to the Trade Marks Registry or with or to the Registrar or any other person may be sent through the post by a prepaid letter.*
- (2) An application or a document so sent shall be deemed to have been made, served, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post.*
- (3) In proving such sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.”*

10. Moreover, even if the petitioner's allegation in the rejoinder affidavit that the 'Form O-3' notice was not sent to the petitioner is taken into account, then also at the highest, it would be a disputed question of fact which cannot be adjudicated upon in writ proceedings. Consequently, the present writ petition and pending application are dismissed.

MANMOHAN, J

JANUARY 20, 2016
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