

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

WRIT PETITION (L) NO. 1990 OF 2017

ALTER S.R.L

....Petitioner

Versus

The Registrar of Trade Marks & Anr.

.... Respondents

Mr.Hiren Kamad a/w Mr. Gautam Pan;chal i/by M/s. Gautam & Co. For
the petitioner.

Mr. Dushyant Kumar for respondents.

**CORAM : SHANTANUKEMKAR &
ANUJA PRABHUDESSAI, JJ.
19TH SEPTEMBER, 2017**

PC

Parties through their counsel.

2. Feeling aggrieved by the action of Respondent No. 1 of removal of the Petitioner's registered Trade Marks Register Numbers 905002, 905397, 905398, 905399 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 (in short "*the Act*"). 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 the Petitioner is liable to be quashed. In support of his submission the learned counsel of the Petitioner has placed reliance on the judgment passed by this Court in the case of following matters:-

- (i) Cipla Ltd. v/s Registrar of Trade Marks and Anr.. MIPR 2013(3) 0129.
- (ii) Writ Petition (L) No. 2015 and 2016 of 2014, order passed by Hon'ble Justice S.J. WAZIFDAR and Hon'ble Justice A.K.Menon on 13th August 2014.
- (iii) Writ Petition (L) Nos. 1683, 1684, 1687, 1688, 1690, 1691 OF 2014 Elder Pharmaceutical Ltd V/s Registrar of Trade Marks with Writ Petition (L) No. 1686 OF 2014 EWF Pharmaceutical Ltd V/s Registrar of Trade Marks and Anr, Order passed by Hon'ble Justice S.J. WAZIFDAR and Hon'ble Justice A.K.Menon on 18th July 2014.

- (iv) Writ Petition No. 41, 42, 46 and 49 of 2016, Harbans Singh Khanduja and Anr v/s Registrar of Trade Marks and Anr, Order passed by Hon'ble Justice S.C.Dharmadhikari and Hon'ble Justice B.P.Colabawala on 20th October 2016.
- (v) Writ petition No. 1259 of 2015, The Court Receiver, High Court, Mumbai v/s Registrar of Trade Marks and Anr. Order passed by Hon'ble Justice Shantanu Kemkar and Hon'ble Justice Makrand Karnik on 4th October 2016.

4. The learned counsel of Petitioner has referred to the reply filed by the Trade Marks Registry to the Petitioners application under the Right of Information Act, wherein the Respondent No. 1 has categorically stated that as per their record no O-3 Notice record and receipt or acknowledgement of O-3 notice is not available on record. The above mentioned RTI applications and their replies are annexed to the Petition at Exhibit C1-C4 and Exhibit D1-D4 respectively.

5. Having considered the submissions made by both the parties and having gone through the documents filed by the Petitioner, it is clear that Respondents have not issued any O-3 notice to the Petitioner.

6. In this 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 laws 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 the 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 A1 to A4 to the Petition.

9. No order as to cost.

(ANUJA PRABHUDESSAI,J.)

(SHANTANU S.KEMKAR,J.)