

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

Date of Pronouncement: 27th March, 2017

+ LPA 367/2016 & CM No. 21606/2016 (*stay*)

M/S GURUJI ENTERPRISES PVT LTD. ...Appellant

Through: Mr. Sanjeev Singh with Mr. D.
K.Yadav and Mr.Amit Tomar, Advocates.

Versus

UNION OF INDIA AND ANR. ...Respondents

Through: Mr. Sanjeev Narula, CGSC with
Mr.Ajay Kalra, Advocates for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

: **Ms. G. ROHINI, CHIEF JUSTICE**

1. The unsuccessful petitioner in W.P.(C) No.6562/2012 is the appellant before us.
2. The said writ petition was filed challenging the removal of Trademark 'GURUJI' which was initially registered in petitioner's favour. The contention was that the prior notice in Form O-3 which is mandatory under Section 25(3) of the Trade Marks Act, 1999 (for short 'the Act') read with Rule 64 of the Trade Marks Rules, 2002 (for short 'the Rules') was not issued. The said allegation was denied by the respondent No.2 and a copy of the Form O-3 notice sent to the petitioner had been annexed as Annexure-A to the counter affidavit. It was also explained that the said notice was generated in the electronic form and was sent by post. Though it was contended by the petitioner that the said notice was never received by him,

the learned Single Judge did not accept the said plea and held that in the light of Rule 15 of the Trade Marks Rules, 2002, Form O-3 notice which was sent by the Registrar must be deemed to have been served. The writ petition was accordingly dismissed by the learned Single Judge by the order under appeal dated 20.01.2016.

3. The order of the learned Single Judge has been assailed before us reiterating the very same contention that the impugned order of removal of trade mark in question was in violation of the provisions of the Trade Marks Act and the Rules made thereunder.

4. It is contended by Mr.Sanjiv Singh, the learned counsel appearing for the appellant/writ petitioner that the learned Single Judge failed to properly appreciate the mandatory provisions of sub-section (3) of Section 25 of the Act that Form O-3 Notice shall be sent to the registered proprietor. It is also contended that in the absence of any material to establish such service of notice to the registered proprietor i.e., the appellant herein, the learned Single Judge should have set aside the impugned removal and allowed the writ petition as prayed for.

5. Per contra, it is contended by Sh.Sanjeev Narula, the learned Standing Counsel for Central Government that the finding of the learned Single Judge that Form O-3 notice was served on the appellant/writ petitioner warrants no interference.

6. The true copy of Form O-3 notice dated 28.02.2008 relating to the appellant's trademark that was annexed to the counter affidavit of respondent No.2 has been placed on record and a perusal of the same shows that it was sent to the registered proprietor "Guruji Enterprises Private Limited" as well as the agent. We have also taken note of Rule 15 of the Rules which

provides that any document sent through the post shall be deemed to have been delivered in the ordinary course of post. Hence, the learned Single Judge was justified in not accepting the plea of the appellant/writ petitioner that the impugned removal was not preceded by the mandatory notice under Section 25(3) of the Act.

7. Though certain issues relating to restoration and renewal of the trademark in question are sought to be raised stating that the appellant/writ petitioner in fact had applied for renewal on 07.08.2012 and the same was erroneously rejected on 28.08.2012, we decline to enter into the said issues since the same were not urged before the learned Single Judge. Therefore, the decision cited by the learned counsel for the appellant, namely, *Union of India v. Malhotra Book Depot*, 2013 (54) PTC 165 [Del] [DB]; *Cipla Limited v. Registrar of Trade Marks & Anr.*, 2013 (56) PTC 217 [Bom] [DB] and *Allied Nippon Ltd. v. Union of India & Ors.*, W.P.(C) 10189/2009 decided on 06.10.2010 have no relevance.

8. For the aforesaid reasons, the appeal is devoid of any merit and the same is dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL J.

MARCH 27, 2017

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