

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

WRIT PETITION NO.1196 OF 2016

...

Riyaz Chowdhry

....Petitioner

V/S

Parfums Parour and Ors.

....Respondents

Mr. Amit Jamsandekar, Ms. Karishma Shirke i/b M/s. Gordhand & Fozdar for the Petitioner.

Mr. Sheeja John a/w Mr. Lokesh Jain, Ms. Ankita Mohanty i/b M/s. M.P. Sarla & Co. for Respondent No.1.

**CORAM : A.A. SAYED &
A.S. CHANDURKAR, JJ.**

DATE : 07 DECEMBER 2018.

ORDER:

1 The challenge in the Petition is to the order dated 6 January 2016 of the Respondent No.2-Intellectual Property Appellate Board (hereinafter referred to as 'the Board') allowing the Application for rectification of the Respondent Company and consequently directing the Registrar of Trademarks to remove the impugned trademark 'LOMANI' under Trademark Registration No.1046446 dated 20 September 2001 in Class 3 of the Petitioner.

2 The case of the Petitioner is that the copy of the Application for rectification dated 3 November 2007 was not served on him. According to the Petitioner, he had shifted his base from Mumbai to Dubai. According to the Petitioner, the impugned order is passed in violation of principles of

natural justice. The Petitioner claims that he has adopted the trademark "LOMANI" on 20 September 2001. He is the registered proprietor of the said trademark vide TM No.1046446 in Class 3 and the registration of the trademark subsists as of date. On the other hand, the case of the Respondent No.1 is that it had taken steps to serve the Petitioner including service by publication in the News papers viz. Times of India and Maharashtra Times (Marathi) and no evidence has been relied upon by the Petitioner to show that he had shifted his base to Dubai as averred in the Petition. According to the Respondent Company it had adopted the trademark "LOMANI" for its products and business internationally since the year 1986 and had started to import its products to India under the name and brand of LOMANI atleast since the year 2000 and the Petitioner by suppressing material facts has obtained the impugned mark in the year 2001 which mark is deceptively similar to that of the Respondent.

3 Inasmuch as the Advocate for the Petitioner had as a matter of fact appeared before the Board prior to the passing of the impugned order (which the impugned order itself records) and had made a grievance that the copy of the Application for rectification was not served upon the Petitioner, we feel that the Board ought to have granted an opportunity to the Petitioner to contest the Application for rectification. It is seen that the

Application for rectification dated 3 November 2007 of the Respondent Company for reasons not known, was sought to be served upon the Petitioner only in the year 2014 i.e. after seven years of filing of the said Application. In the facts and circumstances of the case, we are of the view that in the interest of justice, the Petitioner should to be granted an opportunity to contest the Application for rectification subject however to costs.

4 In the circumstances, we set aside the impugned order dated 6 January 2016 of the Board subject to costs of Rs.1,00,000/- to be paid by the Petitioner to the Respondent Company within four weeks from today. We direct that the Application for rectification shall be decided afresh after granting an opportunity of hearing to the Petitioner. Since the Application for rectification is of the year 2007, we direct that the Board shall decide the Application for rectification expeditiously and in any event within one year from today. The Reply, if any, to the Application for rectification to be filed by the Petitioner within eight weeks from today.

5 The Petition is allowed in the aforesaid terms.

(A.S. CHANDURKAR, J.)

(A.A. SAYED, J.)

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