

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.5382 of 2009
& W.M.P.No.29815 of 2018

M/s Preeti Marketing,
14, Radha Bazaar Lane,
Kolkata-700 001.

By the hand of Nitin P.Jain Partner. ... Petitioner

Vs.

1.Titan Company Ltd.,
Earlier known as Titan Industries Ltd.,
3, SIPCOT Industrial Complex, Hosur-635 126.
Tamil Nadu, Office at 132/133, Divyasree Technopolis,
Off: HAL Airport Road, Yamalur Post, Yamalur,
Bengaluru-560 037.

(R1 amended as per order dated 12.06.2018 by
RPSJ & CSNJ in WMP No.14880/2018 in WP.No.5382/2009)

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

.. Respondents

Writ petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorarified mandamus to call for the records in respect of ORA/108/2006/TM/CH the order dated 13.05.2008 passed by the Intellectual Property Appellate Board, Chennai, quash the same and consequently, direct the second respondent to allow the rectify Petition against registered trade mark No. 573598 in class 14 to rectify the registered trade mark No.523598 in class 14.

For Petitioner : Mr.Madhan Babu

For Respondents: Mr.M.S.Bharath for R1

Mr.T.V.Krishnamachari, SPC for R2

ORDER
(Order of the Court was made by M.M.SUNDRESH,J.)

Though this writ petition has been filed challenging the rejection of the rectification application filed seeking to invoke Sections 47 and 57 of the Trade Marks Act, 1999, the learned counsel for the petitioner would submit that the Tribunal has committed an error primarily on the ground that the petitioner does not have locus standi since it is not a person aggrieved, notwithstanding the civil suit pending at the instance of the petitioner. Incidentally, it is submitted that the documents, which are produced before this Court by way of additional typed set of papers III, which is available before the Registrar have not been looked into.

2. The learned counsel appearing for the sole respondent would submit that it is for the Court to consider the question of remand. However, these documents have not been produced before the Tribunal and therefore, this Court is concerned with the decision making process as against the decision. This Court cannot act like an Appellate Authority to appreciate the evidence produced before this Court, especially, when it has not been produced before the Tribunal.

3. We are not inclined to go into the merits of the case. Insofar as the finding rendered with respect to the person aggrieved is concerned, we are not in agreement with the reasoning adopted by the Tribunal. The definition of 'person aggrieved' will have to be given an extended interpretation. Anybody who is likely to be aggrieved will have to be construed as 'person aggrieved'. Admittedly, the respondent itself filed a suit against the petitioner both for passing off and infringement. To that extent, we are of the view that it has to be held that the petitioner is the 'person aggrieved'. After all, the petitioner seeks only an adjudication on merit. Be that as it may, we are not inclined to go into the issues on merit.

4. The other contention is with respect to the consideration of the documents sought to be canvassed before us. We are not inclined to take this exercise. These documents are very well available before the Registrar of Trade Marks. Perhaps, the Tribunal would have gone into those documents, if a different finding is given on the question of 'person aggrieved'. If these documents form part of the records before the Registrar of Trade Marks and emanated from the first respondent itself, nothing prevented the Tribunal to go into the same. After all, the Tribunal is a final Court of fact and in that case, it is expected to go into the records available before it, though not specifically raised.

5. In such view of the matter, leaving all the issues open, we are inclined to set aside the order of the Tribunal and remit the matter for fresh consideration before the Tribunal. Accordingly, the order of the Tribunal dated 13.05.2008 is set aside and the matter is remitted to the Tribunal for fresh consideration. The Tribunal is directed to consider the matter on merit and in accordance with law by considering the records produced and available before the Registrar of Trade Marks. The Tribunal is expected to pass appropriate orders within a period of six months from the date of receipt of a copy of this order. The writ petition stands allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

raa

To

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

+1 CC to Mr.M.S.Bharath, Advocate sr 77886.

+1 cc to Mr.R.Parthasarathy, Advocate sr 78107.

W.P.No.5382 of 2009

RSV(CO)
SP(12/12/2018)

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