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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15.12.2020

+ LPA 383/2020

M/S FCB GARMENT TEX INDIA P. LTD Appellant

Through: Mr.Vikram Singh, Advocate

versus

THE REGISTRAR OF TRADE MARKS & ORS. Respondents

Through: Mr.Anirudh Bakhru, Mr.S.K.Bansal
and Mr.Ajay Amitabh Suman,
Advocates for R-2.
Mr.Shobhit Tibrewala, Advocate for
R-3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

D.N. PATEL, Chief Justice (*Oral*)

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 32496/2020 (*exemption*)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

LPA 383/2020 with CM APPL. 32495/2020 (*interim stay*)

1. This appeal has been preferred by the original petitioner in W.P.(C) 9010/2020. This appellant (original petitioner) is aggrieved by an interim

order dated 01.12.2020 passed in W.P.(C) 9010/2020, which is annexed as Annexure P-1 to the memo of this LPA.

2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case it appears that this appellant is an assignee of the trademark 'IVANS', which is alleged to be owned by respondent no. 3. It further appears from the facts of the case that respondent no. 2 has preferred an application which is a post-registration application i.e. MP No.76/2018 before Intellectual Property Appellate Board ("IPAB"). This application for cancellation of the trademark registered in favour of respondent no.3 is pending before IPAB.

3. It is contended by learned counsel for the appellant (original petitioner) that an application has already been preferred by the appellant before IPAB for impleadment as a party respondent in the rectification petition preferred by respondent no. 2 for cancellation of the trademark which is registered in favour of respondent no. 3.

4. In view of these facts, no error has been committed by the learned Single Judge in passing the impugned order dated 01.12.2020 in W.P.(C) 9010/2020. The learned Single Judge has held that the remedy of the appellant (original petitioner) lies before the IPAB at this stage, and not before the writ court. This appellant (original petitioner) can always argue the matter before IPAB for impleadment as a party respondent in a rectification petition preferred by respondent no.2, or make such further application as it deems necessary.

5. We therefore, request IPAB to decide the application preferred by this appellant for impleadment and if any application for any other purposes is preferred by this appellant or by respondent no.3 (who is claiming to be the

owner of the trademark 'IVANS'), IPAB will decide the same in accordance with law, rules, regulations and on the basis of the evidences on record, as expeditiously as possible and practicable.

6. With these observations, this LPA is hereby disposed of. The pending application also stands disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

DECEMBER 15, 2020
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