

Sharayu Khot.

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

COMMERCIAL MISCELLANEOUS PETITION NO. 1290 OF 2022

Roche Diagnostics GMBH

...Petitioner

Versus

The Registrar of Trademarks

...Respondent

Mr. Mehul Shah a/w Mr. Chaitali Jadhav for the Petitioner.

Mr. Advait M. Sethna a/w Paushali Roychoudhary, Mr. Shreyas
Deshpande for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 23 June 2023

ORDER :

1. By this Commercial Miscellaneous Petition, the Petitioner is seeking setting aside of the impugned order dated 22nd March 2021 passed by the Respondent.

2. The Petitioner has stated that the impugned order is an unreasoned order, as the submission and/or documents relied upon by the Petitioner in their Reply dated 21st September 2017 has not been considered and/or dealt with.

3. Mr. Sethna, learned Counsel appearing for the

Respondent has pointed out that the Commercial Miscellaneous Petition has been filed beyond the time for filing Appeal prescribed under Rule 125 of the Trade Marks Rules, 2017 (“**the said Rules**”) i.e. three months from the date of passing of the impugned order. He has submitted that though the impugned order was passed on 22nd March 2021, the present Appeal/Commercial Miscellaneous Petition has been filed only on 15th June 2022. Thus, beyond the period of 90 days.

4. Learned Counsel appearing for the Petitioner has dealt with this preliminary issue of limitation by placing reliance upon Rule 36 of the said Rules, wherein it is provided that upon the decision of the Registrar being communicated to the Applicant in writing at his address of service and in the event, the Applicant intends to appeal from such decision, he may within thirty days from the date of such communication apply in Form TM-M to the Registrar requiring him to state in writing the grounds of and the materials used by him in arriving at the decision. He has referred to the application made in Form TM-M which had been sent on 19th April 2021 and received by the Registrar on that date. There is no response to the application. He has further relied upon Sub-Rule (3) of Rule 36 of the said Rules,

which provides that the date when the Registrar's response to the statement in writing under Sub-Rule (1) is received by the Applicant that shall be deemed to be the date of the Registrar's decision for the purpose of Appeal. In view of there being no statement in writing received by the Applicant pursuant to the application in Form TM-M, there is no question of the time period prescribed under Rule 125 running.

5. Having considered the submissions on the preliminary ground, I am inclined to accept the submission on behalf of the Petitioner that three months from the date of the decision of the Registrar will not apply in the present case, since the Petitioner has applied in Form TM-M to the Registrar requiring to state in writing the grounds, and the material used for arriving at the decision. Thus, the three month period can only commence from receipt of the statement in writing under Sub-Rule (1) of Rule 36 as provided in Sub-Rule (3) of Rule 36 of the said Rules.

6. Accordingly, the preliminary objection raised on behalf of the Respondent is not accepted and prayer clause (a) is rejected.

7. Mr. Sethna has stated on instructions that the impugned order may be remanded back to the Respondent for *de novo* hearing.

8. In view thereof, the impugned order dated 22nd March 2021 is set aside and remanded back to the Respondent for fresh hearing and consideration of the submissions and/or material produced by the Petitioner and thereafter, giving a reasoned order. This exercise shall be carried out within a period of 12 weeks from the date of this order.

9. Commercial Miscellaneous Petition is accordingly, disposed of.

[R.I. CHAGLA J.]