



WEB COPY



W.P.Nos.10332 & 10333 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.10332 & 10333 of 2016 and
WMP.Nos.9136 & 9137 of 2016

WP.No.10332 of 2016

M/s.Victor Guedes Industria
E.Commercio S.A.
A company incorporated under the laws of Portugal
And having office at
Largo Monterroio
Mascarenhas #1, 1070-184 Lisboa
Portugal
Rep. herein by its Authorised Signatory
Govardhan Gajjal

... Petitioner

Vs

1.The Deputy Registrar of Trade Marks
Trade Mark Office
Anna Salai, Guindy Industrial Estate
Guindy, Chennai-600 032.

2.M/s.Galla Foods Pvt. Ltd.
No.12, Kodambakkam High Road
Chennai-600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the records of



W.P.Nos.10332 & 10333 of 2016

the 1st Respondent pertaining to the impugned order dated 13.10.2014 passed in Opposition No.776874 to Application No.1796011, Quash the same and consequently, direct the 1st Respondent to take on record, the Evidence in Support of Opposition filed by the Petitioner in Opposition No.776874 to Application No.1796011 in Class 29.

AND

WP.No.10333 of 2016

M/s.Helmet Integrated Systems Ltd
Unit 3, Focus 4, Fourth Avenue
Letchworth HERTS SG6 2 TU
United Kingdom
Rep. By its Power of Attorney
Govardhan Gajjal

... Petitioner

Vs

1.The Deputy Registrar of Trade Marks,
Trade Mark Office
Anna Salai,
Guindy Industrial Estate
Guindy, Chennai
Tamil Nadu - 600 032.

2.Naveen Das

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent pertaining to the impugned order dated 23.10.2014 passed in Opposition No.MAS-748031 to Application No.1708645, Quash the same and consequently, direct the 1st Respondent to take on record, the Evidence in



W.P.Nos.10332 & 10333 of 2016

Support of Opposition filed by the Petitioner in Opposition No.MAS-748031 to
Application No.1708645 in Class 9.

(In both WPs)

For Petitioners : Mr.R.Palaniandavan

For Respondents : Mr.R.Subramanian (for R1)
Central Government Standing Counsel
Mr.R.Prem Kumar (for R2)
for M/s.King & Patridge

COMMON ORDER

These two Writ Petitions raise a common question of law and involve similar factual matrices as well. Hence both are disposed by way of a single order.

2. In W.P.No.10332 of 2016, the petitioner, Victor Guedes Industria E Commercio S.A. (hereinafter referred to as 'Victor') is the proprietor of the trade mark 'Gallo' claimed to have been originally adopted in or around 1919 for edible oil. The second respondent Galla Foods Pvt. Ltd. made an application for the trade mark 'Galla' that came to be opposed by way of an opposition before the first respondent/The Deputy Registrar of Trade Marks (R1).

3. In W.P.No.10333 of 2016, the petitioner is Helmet Integrated Systems Ltd. (hereinafter referred to as 'Helmet'), a company registered under the laws



of the United Kingdom and proprietor of the trade mark 'Alpha'. It claims to have adopted the mark in or around 1983 for protective equipment, such as helmets and jackets. The second respondent Mr.Naveen Das had made an application for the trade mark 'Alphia', for which the petitioner filed an opposition before R1.

4. Barring the aforesaid factual difference, the legal issue arising for determination is one and the same in both Writ Petitions. To the opposition filed by the petitioners, counter statements were filed by the second respondents and duly communicated to the authorised representatives of the petitioners.

5. Victor sought a month's extension to file evidence in support of its opposition in TM56 dated 26.08.2011. Helmet, upon receipt of the counter also sought an extension along similar lines as Victor. Both petitioners, by way of abundant caution, also relied upon the evidences contained in the statements, averments and counters set out in the notice of opposition.

6. This procedure aligns with Rule 50 of the Trade Marks Rules, 2002 (in short 'Rules'), which provides for the production of evidence in support of opposition, the timelines in this regard and the procedure to be followed.



7. In the case of Victor, since there was some delay in the receipt of evidence dispatched from Portugal, it had applied for further extension of time in TM56 after remitting the prescribed fee, on 28.09.2011. Due to the silence of R1, an Interlocutory Petition had been filed on 21.10.2011 seeking condonation of the delay in filing of evidence and requesting that the evidence filed be taken on record. Helmet, on its part, filed evidence in support of opposition on 12.01.2012. It also filed an Interlocutory Petition along similar lines as Victor.

8. Both petitioners have received orders dismissing the Interlocutory Petitions. The impugned orders are dated 13.10.2014 and 23.10.2014 and proceed on the basis that R1 did not have the requisite statutory authority to condone any delay in tendering of evidence.

9. It is the contention of the petitioners that R1 is vested with necessary statutory authority to condone such delay on a proper interpretation of Rule 50 of the Rules read with Section 131 of the Trade Marks Act, 1999 (in short 'Act') Act. Not doing so would, according to the petitioners, be contrary to, and militate against the provisions of Section 21 of the Act.

10. At this juncture, it would be relevant to extract the provisions of Section 21 dealing with opposition to registration as below:



21. Opposition to registration.—1 [(1) Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration.]

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceedings before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.



11. Rule 50 sets out the timelines for tendering of evidence, being within 2 months from service upon the opponent with a copy of the counter statement.

Rule 50(1) also states that the Registrar may, on request, enlarge the aforesaid period, by a month. The opponent is permitted to state in writing, that he does not desire to adduce evidence in support of opposition but intends to rely upon the facts stated in the notice of opposition. This, both petitioners have done.

12. Rule 50(2) states that if the opponent does not take the benefit of the time scheme under Rule 50(1), he shall be deemed to have abandoned his opposition. Sub-Rule (3) of Rule 50 states that the application seeking extension by one month as stated under Rule 50(1) shall be in Form TM-56, be accompanied by necessary fee and filed before the expiry of a period of 2 months as stipulated under sub-Rule (1) of Rule 50.

13. Section 21, which deals with opposition to registration, states that any person may, within 4 months from date of advertisement or re-advertisement of an application for registration, oppose such proposed registration. The Registrar is required to serve a copy of the opposition to the applicant, who shall, within 2 months of receipt thereof, file a counter. If he does not do so, he is deemed to have abandoned his opposition for registration. Section 21(4) enables the opponent and applicant to submit evidence in support



of application/counter respectively, to the Registrar, who shall hear them, if they so desire.

14. The distinction put forth by the petitioners is that while the timelines under Section 21(1) and (2) are statutorily enshrined, the timelines in regard to the submission of evidence are, by virtue of Section 21(4), set out under the Rules. Thus, there must be some weightage accorded to this difference, one statutorily mandated, the other, by prescription, per the Rules.

15. That apart, a comparison is sought to be drawn between Rules 50 and 51 that deal with evidence in support of opposition, and application respectively. Rules 50 and 51 are extracted below, in seriatim.

50. Evidence in support of opposition.—

(1) Within two months from services on him of a copy of the counterstatement or within such further period not exceeding one month in the aggregate thereafter as the Registrar may on request allow, the opponent shall either leave with the Registrar, such evidence by way of affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall deliver to the applicant copies of any evidence that he leaves with the Registrar under this sub-rule and intimate the Registrar in writing of such delivery.

(2) If an opponent takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his opposition.

(3) An application for the extension of the period of one month mentioned in sub-rule (1) shall be made in Form TM-56



WEB COPY

accompanied by the prescribed fee before the expiry of the period of two months mentioned therein.
The trade marks rules, 2002

51. Evidence in support of application.—

(1) Within two months or within such further period not exceeding one month in the aggregate thereafter as the Registrar may on request allow, on the receipt by the applicant of the copies of affidavits in support of opposition or of the intimation that the opponent does not desire to adduce any evidence in support of his opposition, the applicant shall leave with the Registrar such evidence by way of affidavit as he desires to adduce in support of his application and shall deliver to the opponent copies thereof or shall intimate to the Registrar and the opponent that he does not desire to adduce any evidence but intends to rely on the facts stated in the counterstatement and or on the evidence already left by him in connection with the application in question. In case the applicant relies on any evidence already left by him in connection with the application, he shall deliver to the opponent copies thereof.

(2) An application for the extension of the period of one month mentioned in sub-rule (1) shall be made in Form TM-56 accompanied by the prescribed fee before the expiry of the period of two months mentioned therein.

16. Petitioners point out that though Rules 50 and 51 draw sustenance from the rule making power under Section 157(2) (vii), while Rule 50 is interpreted by the authorities to state that there is no power of condonation vested in the authority, the authorities routinely condone delay in tendering of evidence in support of application.

17. The answer, in my considered view, lies in the construction of Rule 51 that does not contain an equivalent of Rule 50(2) therein. Thus, even if



there were to be no evidence tendered by the applicant within the time frame stipulated under Rule 51(1), the application would survive, whereas, in the same situation, an application for opposition would be deemed to have been abandoned.

18. Legislature has thus made a conscious distinction between the two categories granting a wider berth in the matter of an applicant, when compared to an opposition. This position has been remedied in the 2017 Rules when Rules 45 and 46, analogous to Rules 50 and 51 of the 2002 Rules, are brought in sync with each other on all fronts with the addition of Rule 46(2) that states that *'if an applicant takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his application.'*

19. Several judgements are cited at the Bar, some in the context of the Trade and Merchandise Marks Act, 1958 and the connected 1959 Rules. The earliest decision cited is that of the Bombay High Court in the case of *Kantilal Tulsidas Jobanputra v. Registrar of Trade Marks and Ors*¹. The question that arose was whether the provisions of Rule 53 of the 1959 Rules was mandatory or directory.

¹ 1982 (2) PTC 127 (Bom.)



20. The Bombay High Court held that the intention of the Legislature was clear that the Rule was not a rigid one, and in genuine circumstances, the authorities could well be persuaded to extend the time for filing evidence beyond the period of 2 months provided.

21. The same view has been taken by the Full Bench of the Delhi High court in *Hastimal Jain Trading As Oswal Industries v. Registrar of Trade Marks & Anr*² as well as the Gujarat High Court in *Wyeth Holdings Corpn. and Another v. Controller General of Patents, Designs & Trade Marks*³ and *Bausch and Lomb Incorporated v. Union of India*⁴.

22. A learned single Judge of the Delhi High Court though, has taken the view that Rule 50 is mandatory, in the context of the present Act and Rules. In coming to this conclusion, the Court bore in mind the observations of the Hon'ble Supreme Court in the case of *Chief Conservator (Wildlife) v. Nisar Khan*⁵ that '*it is now well settled that when rules are validly framed, they should be treated as part of the Act*'.

23. At paragraphs 10 and 11 of the decision reported in SCC Online, they referred to judgments in the case of *Delta Impex V. Commissioner of*

² 2000 (52 DRJ (FB)

³ 2006 SCC Online Guj 620

⁴ 2016 SCC Online Guj 2980

⁵ ((2003) 4 SCC 595)



Customs⁶, Pranam Enterprises V. Commissioner of Sales Tax, New Delhi⁷ and Union of India V. Popular Construction Co.⁸.

24. Though rendered in the context of revenue enactments, the proposition is that where the Statute prescribes a maximum condonable period, it is not open to the authorities under that Statute to extend the period for doing an act beyond the prescribed period. The inference I draw that the time limits imposed under Rule 50 would have the force of law and would have to be strictly enforced.

25. Rule 50 is categoric to the effect that a request for extension of time of one month should be filed within the initially granted two months period. The extension is clearly stipulated as being for one month only. There is thus, in my considered view, no avenue for discretion that vests in the Registrar to extend the period thereafter.

26. There have been instances, though in the context of other enactments, where this Court has had occasion to consider a request for condonation of delay beyond the period of limitation stipulated under Statute.

27. In such cases and seeing as the power under Article 226 is wide, the Hon'ble Supreme Court has, while emphasizing the necessity to impose self-

6 ((2004 DLT 209)

7 (111 (2004) DLT 743)

8 ((2001) 8 SCC 470



restraint, left it open to the writ courts to examine the reasons that have caused the delay beyond the maximum condonable period and interfere if sufficient justification was available, in the opinion of the Court.

28. This situation does not arise in this case, as the petitioners have not sought the intervention of the Court for condonation of delay itself but have attacked the impugned orders on a legal principle, as to whether the Registrar had the power to condone delay beyond the maximum condonable period.

29. There is yet another argument, touching upon Rule 105 extracted below:

105. Extension of time.—

(1) An application for extension of time under section 131 (not being a time expressly provided in the Act or prescribed by rule 79 or by sub-rule (4) of rule 80 or a time for the extension of which provision is made in the rules) shall be made in Form TM-56.

(2) Upon an application made under sub-rule (1) the Registrar, if satisfied that the circumstances are such as to justify the extension of the time applied for, may, subject to the provisions of the rules where a maximum time limit is prescribed and subject to such conditions as he may think fit to impose, extend the time and notify the parties accordingly and the extension may be granted though the time for doing the act or taking the proceeding for which it is applied for has already expired.



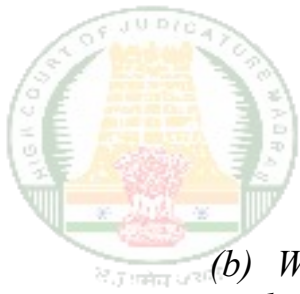
30. Rule 105 addresses applications for extension of time under Section 131 and excludes timelines provided under the Act or prescribed by Rule 79 or 80(4).

31. The Delhi High Court has, in the case of *Surinder Corporation, U.S.A. v. Hindustan Lever Limited & Anr*⁹, held that Rule to be inapplicable, as Rule 50 is specific to tendering of evidence and the timelines to be followed in that regard. There is thus no necessity to go to Rule 105 at all as it does not find any reference in Rule 50.

32. I agree, also for the reason that the request of the petitioners before the authority was not in terms of Rule 105, but in terms of Rule 50 and, as an alternative measure, Rule 53. One of the petitioners, Victor, has, incidentally referred to Section 131 as well. However, in light of the fact that both Section 131 and Rule 105 are general in nature and Rule 50, one specific to opposition, it is the latter Rule that would be attracted in this case and bind the authority concerned.

33. The issues raised before the Full Bench in *Hastimal Jain Trading As Oswal Industries* (supra) are as follows:

(a) *Whether Rule 53 (2) of the Trade and Merchandise Marks Rules 1959 is directory or mandatory ?*



(b) Whether the Registrar's power to extend the time for filing evidence in support of the opposition stands extinguished if an application for extension of time is not filed or extension is not granted before the expiry of the period of two months pre- scribed under Rule 53 (1) of the Trade and Merchandise Marks Rules, 1959 ?

(c) What is the effect of Rule 106 of the said Rules on the exercise of powers by the Registrar under Rule 52(2)?

34. Rule 53(2) of the 1959 Rules prescribed that evidence 'shall' be tendered within two months, granting discretion to the Registrar for extension of such time, if required. It was in this context that the Full Bench concluded that Rule 53(2) was directory, as it contained an in-built measure for flexibility.

35. However, Rule 50(2) of the present Rules, in contra distinction to Rule 53(2) of the 1959 Rules, does not contain the expansive language that Rule 53(2) did, and no discretion has been granted to the Registrar to direct otherwise than follow the prescription under the present Rule.

36. Following the dictum of the Hon'ble Supreme Court in *Ramachandra Keshav Adke (Dead) by Lrs. V. Govind Joti Chavare*¹⁰ and *Jessel MR's Taylor V. Taylor*¹¹, that where power is given to do a particular thing in a particular way, then that thing must be done in that way only and all other methods of performance are forbidden, the Delhi High Court in *Surinder*

¹⁰AIR 1975 SC 915
¹¹1875 (1) Ch D 426



Corporation, U.S.A (supra) held that the provisions of Rule 50(2) are mandatory.

37. The Intellectual Property Appellate Board has, in several matters, viz., *Asian Paints Limited Nirmal v. Assistant Registrar of Trade Marks and Another*¹², *Tata Motors Limited v. Cavincare Pvt. Ltd*¹³, *Merck KGaA, Formerly known as E.Merck, v. Registrar of Trade Marks, Trade Marks Registry and another*¹⁴ and *Pioneer Electronic Corporation v. Suse Electronics and Ors*¹⁵ followed the ratio of the Full Bench of the Delhi High Court in *Hastimal Jain Trading As Oswal Industries*.

38. In *M/s.H.I. Tamboli & Co., v. M/s.Urmin Products Pvt. Ltd. and another*¹⁶ the view taken is as against the petitioner following the decision in *Surinder Corporation, U.S.A.*(supra). The decisions in *Asian Paints Limited Nirmal* and *Tata Motors Limited* (supra) are prior to the decision in *Surinder Corporation U.S.A*, whereas, the decisions in *Merck KGaA, Formerly known as E.Merck*, and *Pioneer Electronic Corporation* (supra) are post that decision.

39. Though the decision in *Surinder Corporation U.S.A.* has been cited before the Bench, they have preferred to go with the ratio of the Full Bench in

¹² 2005 SCC Online IPAB 48

¹³ 2006 SCC Online IPAB 5

¹⁴ 2008 SCC Online IPAB 129

¹⁵ Manu/IC/0022/2020

¹⁶ 2012 SCC Online IPAB 82



Hastimal Jain Trading As Oswal Industries in favour of the wider powers of the Registrar.

40. One of the grounds upon which this conclusion has been arrived at is the observation in the draft manual for Trade Marks Practice and Procedure in which parity has been followed in the interpretation of Rules 50 and 51. After noting the dichotomy in the decisions of the Gujarat and Delhi High Courts, the manual states that *‘Thus law is still evolving. Till such time it is finally settled, the Registrar will continue to adopt a uniform policy as per above decision of the Gujarat High Court’*.

41. The petitioners have also referred to judgments on the Rule of procedure, urging that procedural Rules must be interpreted in conformity with the Act and to further the cause of justice.

42. Reliance is placed upon judgments of the Hon’ble Supreme Court in the case of *Kailash v. Nankhu and others*¹⁷ and *Sushil Kumar Sen v. State of Bihar*¹⁸ as well as of Punjab & Haryana High Court in the case of, *Balwant Singh and another v. Firm Raj Singh-Baldev Kishen*¹⁹ and of Calcutta High Court in the case of *Rupendra Deb Raikut v. Ashrumati Debi and others*²⁰.

¹⁷ 2005 4 SCC 480

¹⁸ 1975 1 SCC 774

¹⁹ Civil Revision Petition No.697 of 1968 dated 17.10.1968

²⁰ 1949 SCC Online Cal 44



43. Per contra, respondents have, in addition to the decisions in the case of *H.I.Tamboli & Co.*, and *Surinder Corporation U.S.A*, relied upon several more decisions that are discussed briefly below.

44. In the case of *Pidilite Industries Limited v. The Registrar of Trade Marks and another*²¹, the Circuit Bench of the Board at Ahmedabad preferred to follow the view of the Full Bench of the Delhi High Court in the case of *Hastimal Jain Trading As Oswal Industries* holding Rule 50(2) to be directory. This decision, in fact, favours the petitioner, though it is placed on record by the respondents.

45. In *M/s.Mahalakshmi Products v. M/s.Surinder Engineering Works and another*²², the decision in *Surinder Corporation U.S.A*, was followed, as has been by the Gujarat High Court in *Torrent Pharmaceuticals Ltd.V. UCB*²³

46. In *Allied Blenders and Distillers Pvt. Ltd. v. Intellectual Property Appellate Board and Others*²⁴, a Division Bench of this Court considered whether a notice of opposition to registration of a trademark may be issued beyond the period prescribed under Section 21 of the Trade Marks Act, 1999.

²¹ 2008 SCC Online IPAB 8

²² 2012 SCC Online IPAB 87

²³ 2005 (31) PTC 14 Guj.

²⁴ 2010 (1) CTC 129



47. Noting that the Trade Marks Act is a Special enactment, the Division Bench observed that a person keen on opposing a registration is expected to be vigilant and is to oppose registration in the prescribed manner in the prescribed time and on payment of prescribed fee within the time stipulated. Paragraph 27 is relevant and is extracted below:

27. In the instant case, the [Trade Marks Act](#), 1999 is a special Act. It gives a special right to the parties who want their goods and services to be protected by getting a registration of the trade mark. Anybody who is keen to oppose any such registration has also to be vigilant and has to oppose the registration in the prescribed manner, in the prescribed time, and on payment of prescribed fee within the time provided for that purpose. The counter statement is also to be filed in the prescribed time and in the prescribed manner. The notice of opposition and the counter statement are like the plaint and the written statement of the proceeding. [If the Special Act](#) provides for specific time, manner and fees for filing of the plaint, it has to be so done in compliance and the requirements cannot be relaxed. Sub-[section 21\(7\)](#) of the Act provides only for amendment of the notice of opposition and counter statement, but that cannot be construed as a provision to cure any deficiency in the requirement of [Sections 21\(1\)](#) and [21\(2\)](#) of the Act. [Section 131](#) and [Rule 53](#) can also not be pressed into service, since that Section will apply only where time is not expressly provided under the statute and [Rule 53](#) is concerning the time for leading the evidence. It cannot apply to filing of notice of opposition or the counter statement. Any other interpretation will defeat the objective of the Act, and hence, cannot be accepted.

The time scheme under the Act was thus held to be sacrosanct and inapplicable.

48. The aforesaid decision has been followed in *Basmati Growers Association House v. The Agricultural & Processed Food Products Export*



*Development Authority (APEDA) and another*²⁵, in the context of the Geographical Indications of Goods (Registration & Protection) Rules, 2002, specifically Rule 44 thereof, which is analogous to Rule 50 of the 2002 Trade Marks Rules. While dealing with the question as to whether Rule 44 of the GI Rules is mandatory or directory, the decision in *Allied Blenders and Distillers* was applied and the decision came to be against that appellant.

49. In *Aman Engineering Works v. Registrar Trade Marks, Trade Marks Registry and Another*²⁶, a similar view was taken by the Delhi High Court against that petitioner holding the Rule to be mandatory. To be noted that in that case, the challenge by the petitioner was to orders passed by the Senior Examiner of Trade Marks in Review Applications filed by the respondent that had been allowed by the authority. Lastly, they rely upon a decision in *Seiko Cables of India v. Hattori Seiko Company Ltd. & Another*²⁷ to similar effect.

50. My attention is also drawn to the provisions of Section 131, that provides for condonation of delay by the Registrar on an application in the prescribed manner. Section 131 is extracted below:

131. Extension of time.—(1) If the Registrar is satisfied, on application made to him in the prescribed manner and

²⁵ 2016 SCC Online IPAB 2

²⁶ 2022 SCC Online Del 3666

²⁷ 2002 (62) DRJ 640



WEB COPY

accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in this Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

51. My attention is specifically drawn to the portion in parenthesis in Section 131(1) above, reading '*not being a time expressly provided in this Act*'. Learned counsel for the petitioners would point out that enlargement of the time sought for by the petitioners is not one provided '*in*' the Act, but one '*under*' the Act, such as, an extension provided under the Rules. The latter, according to him, is elastic.

52. Upon a consideration of the arguments advanced, I am inclined to hold against the petitioners. Though at first blush, some of the arguments advanced by the petitioner appear attractive, the language of the Rule clearly admits of no elasticity. The overwhelming view of the Courts, is also to the effect that the application of Rule 50(2) is mandatory.



W.P.Nos.10332 & 10333 of 2016

53. The judgments in the context of the 1958 Act and 1959 Rules are distinguishable by apparent difference in language itself, the erstwhile Rule expressly containing an enabling grant of discretion upon the Registrar.

54. I am of the view that there is no infirmity in the impugned orders and the same stand confirmed. In both cases, the petitioners have, while breaching the prescribed timelines, been cautious enough to rely upon the original statement of facts and the contents thereto, while opposing the application for registration of trademark. Rule 53 entitles an opponent to tender additional evidence, for admission of which, discretion is granted to the authority. It is left open to grant the Registrar, if he thinks fit to grant such leave, putting the applicant to such terms as he may think fit.

55. These Writ Petitions are dismissed. Since the proceedings relate to the year 2014, let matters be taken up forthwith and completed within a period of sixteen (16) weeks from date of receipt of a copy of this order. No costs. Connected Miscellaneous Petitions are also dismissed.

03.03.2023

Index : Yes / No
Speaking Order/Non-speaking order
Neutral Citation: Yes / No
sl



W.P.Nos.10332 & 10333 of 2016

To
WEB COPY

1. The Deputy Registrar of Trade Marks
Trade Mark Office
Anna Salai, Guindy Industrial Estate
Guindy, Chennai-600 032.



WEB COPY



W.P.Nos.10332 & 10333 of 2016

DR.ANITA SUMANTH, J.

WP.Nos.10332 & 10333 of 2016 and
WMP.Nos.9136 & 9137 of 2016

03.03.2023