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(T)CMA(TM)/64/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:
**THE HONOURABLE MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

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(OA/1/2018/TM/CHN)

Sun Pharmaceutical Industries Ltd.,
Sun House, 201 B/1, Western Express Highway,
Goregaon (East), Mumbai - 400 063.

...Appellant

-VS-

1.The Assistant Registrar of Trademarks,
Trade Marks Registry, IP Bhawan,
G.S.T. Road, Guindy,
Chennai - 600 032.

2.Mr.Pranesh Kumar & Mr.M.Srinivas,
Trading as M/s.ARTEMISIA HEALTHCARE,
Plot No.20, Part H, No.5-3/2/14/1,
Padmavathi Colony, Phase-II,
Buduppall, Hyderabad - 500 092.

...Respondents

PRAYER: Transfer Civil Miscellaneous Appeal (Trademarks) filed under Section 91 of the Trade Marks Act, 1999, praying that the impugned order dated 07.06.2017 passed by the 1st respondent be quashed and set aside and the status of the application No.2284770 be reminisced as opposed.



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For Appellant : Mr.S.Diwakar
for M/s.Rajesh Ramanathan

For R1 : Mr.P.G.Santhosh Kumar
Senior Panel Counsel

For R2 : No appearance

JUDGMENT

The appellant assails an order dated 19.05.2017 (signed on 07.06.2017) by which the Registrar of Trade Marks concluded that Opposition No.858461 is deemed to be abandoned on the ground of failure to file evidence in support of the opposition under Rule 50 of the Trade Marks Rules, 2002. On 07.08.2023, I recorded that notice was served privately on the second respondent on 02.08.2023 as per the affidavit of service placed on record by the appellant. In spite of service of notice, the second respondent remains unrepresented. Consequently, the matter is proceeded with in the absence of the second respondent.

2. Oral arguments on behalf of the appellant were addressed by Mr.S.Diwakar, learned counsel, and on behalf of the first respondent by Mr.P.G.Santhosh Kumar, learned Senior Panel Counsel.



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3. Mr.Diwakar invited my attention to the notice of opposition filed by the appellant on 27.07.2016 pursuant to the advertisement of the impugned mark CAL-K-SUN under Journal 1739 dated 04.04.2016. Pursuant to the filing of the notice of opposition, learned counsel submitted that the counter statement of the applicant/second respondent herein was received by the appellant on 18.02.2017. Upon receipt thereof, learned counsel submitted that the appellant was required to file evidence in support of such opposition within a period of two months which is extendable by a further one month, as per Rule 50 of the Trade Marks Rules, 2002, which broadly corresponds to Rule 45 of the Trade Marks Rules, 2017.

4. In terms thereof, learned counsel submitted that evidence was filed by the appellant under communication dated 31.03.2017, which was dispatched to the Registrar of Trade Marks under AWB No.15003122223 and to the second respondent herein under AWB No.15003122234. By referring to the document evidencing tracking details thereof, learned counsel submitted that the communication was delivered both to the Registrar of Trade Marks and the second respondent on 03.04.2017. Consequently, learned counsel submitted that evidence was filed by the



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appellant/opponent within the time limit prescribed under the then extant Trade Marks Rules, 2002.

5. In spite of evidence having been filed within the time limit prescribed by the Trade Marks Rules, learned counsel submitted that the impugned order was issued, without hearing, entirely on the basis that the appellant/opponent failed to file evidence in support of the opposition within the extended time limit of three months. Learned counsel further submitted that an appeal against the order was filed on 19.06.2017, which is within the limitation period for such purposes. In spite of lodging an appeal within the prescribed time limit, learned counsel submits that the impugned trade mark was registered.

6. In response to these submissions, Mr.P.G.Santhosh Kumar submitted that Trade Mark No.2284770 was registered in Class 5 pursuant to the application submitted by the second respondent herein. Consequently, he contended that the remedy of the appellant lies in filing a rectification petition and not by way of the present appeal.



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7. The documents on record evidence the filing of a notice of opposition by the appellant on 27.07.2016, which was registered under Opposition No.858461. The counter statement in response thereto was received by the appellant on 18.02.2017. When reckoned from the date of receipt of the counter statement, the original two month time limit under Rule 50 of the Trade Marks Rules, 2002 would expire on or about 17.04.2017. The communication dated 31.03.2017 enclosing the affidavit of the appellant by way of evidence was delivered to the Registrar of Trade Marks and the second respondent herein on 03.04.2017 and this is corroborated by the document containing the tracking details from DHL. Thus, the evidence on record leads to the inference that the appellant/opponent filed evidence in support of the opposition within three months from the date of receipt of the counter statement of the applicant/second respondent. In these circumstances, the conclusion in the impugned order that the appellant/opponent failed to file evidence in support of the opposition within the extended time limit of three months is clearly untenable. As against the order, the appellant filed the appeal on or about 19.06.2017, which is within the limitation period then prescribed for



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such purpose. Upon such appeal having been filed, the Registrar of Trade Marks should not have proceeded to issue the certificate of registration. Consequently, this appeal is liable to be allowed and the opposition is liable to be restored.

8. For reasons set out above, (T)CMA(TM) No.64 of 2023 is allowed on the following terms:

(1) The order dated 19.05.2017 (signed on 07.06.2017) of the first respondent is set aside.

(2) Opposition No.858461 is restored and, consequently, Trade Mark Application No.2284770 shall be proceeded with from the stage subsequent to receipt of evidence in support of the opposition.

(3) Until the opposition is decided on merits, the registration of Trade Mark No.2284770 shall not be acted upon and shall be subject to the outcome thereof.

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Index:Yes
Speaking Order
Neutral Citation:Yes
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SENTHILKUMAR RAMAMOORTHY,J.

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