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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:-8th December, 2023.*

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C.A.(COMM.IPD-TM) 139/2021**RALSON INDIA LIMITED**

..... Appellant

Through: Ms. Zeba Tarannum Khan with Ms.
Sreelakshmi Menom, Advs. (M.
9818558690)

versus

**SHAM LAL M/S RAMESH LAL
AND SONS AND ANR.**

..... Respondents

Through: Mr. Umesh Mishra & Mr. Amit
Kumar, Advs. for R-1 (M.
9868401295)
Mr. Harish Vaidyanathan Shankar,
CGSC, with Mr. Srish Kumar
Mishra, Mr. Alexander Mathai
Paikaday & Mr. Krishnan V., Advs.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. In the present appeal, the Appellant--M/s. Ralson (India) Limited is aggrieved by the order dated 26th April, 2018 by the Trade Marks Registry dismissing the opposition filed by the Appellant.
3. The Respondent no.1 – Sham Lal trading through M/S Ramesh Lal and Sons filed an application for registration of the mark 'R RALSON' bearing number 2054209 in Class 35 under the Trade Marks Act, 1999. The said mark was advertised in the Trade Marks Journal No. 1736 dated 14th March, 2016, the extract of which is set out below:



Trade Marks Journal No: 1736 , 14/03/2016

Class 35



2054209 16/11/2010

SRAN LAL

trading as :RAMESH LAL & SONS

DR. GULAB MALI, RIVOLI, LUDHIANA - 141001, PUNJAB

SERVICES

Used Since: 21/04/1975

DELHI

ADVERTISING, OFFICES FUNCTIONS, TRADING, MARKETING AND EXPORT OF INDUSTRIAL AND DOMESTIC SEWING MACHINES INCLUDING OVER LOCK MACHINES AND PARTS THEREOF, MACHINE STANDS AND NEEDLES

4. The Appellant claims to be the first adopter of the mark 'RALSON' for tyres, tubes and also parts and accessories for cycle, rickshaw and auto vehicles. The Appellant was aggrieved by the above application for registration and accordingly opposed the same vide Opposition No. DEL.-850180 dated 8th March, 2017. The said opposition was dismissed by the impugned order dated 26th April, 2018.
5. The dismissal of the Opposition by Respondent No.2- the Id. Deputy Registrar of Trade marks was on the ground of non-filing of evidence in support of the opposition. The said order reads as under:-

"Proceedings were initiated under Section 21 of the Trade Mark Act, 1999, by the above named opponent to oppose the registration of trade mark applied for by the above named applicant and whereas the Counter Statement was filed by the applicant and the same was served to the opponent vide 2300311 dated 15-11-2017 and whereas within the time prescribed under the rules, neither any evidence in support of opposition



was filed nor any statement was submitted on behalf of the opponent to the effect that the opponent does not desire to adduce evidence but wants to rely on the facts mentioned in the Notice of Opposition the abovementioned opposition is therefore deemed to have been abandoned under Rule 45(2) of the Trade Marks Rules 2017.

IT IS HEREBY FURTHER ORDERED that there shall be no order as to cost of these proceedings. ”

6. Ld. Counsel for the Appellant submits that the counter-statement was not received at the address for service and, therefore, the Appellant could not file the evidence. She relies upon the decision of the Co-ordinate Bench in ***C.A.(COMM.IPD-TM) 69/2022 titled M/s Mex Switchgears Private Limited 9th Kilometer, Mex Estate, Pathankot Road, Jalandhar v. Vikram Suri Trading As M/s Armex Auto Industries***. The Court in the said judgment observed as under:-

“7. Section 143 of the Trade Marks Act states that an address for service, stated in an application or notice of opposition shall, for the purposes of the said application or notice of opposition, be deemed to be the address of the applicant or the opponent, and permits service of all documents in relation to the application or the notice of opposition by leaving the documents at, or sending them by post to, the said address as provided in the application or notice of opposition.

8. In the event that an e-mail ID is provided by an applicant or an opponent in the notice of opposition, I do not think that there can be any manner of doubt that service of documents relating to the application or the notice of opposition at the said e-mail ID would suffice as service within the meaning of Section 143 of the Trade Marks Act. This is because, by providing his e-mail ID in the application or notice of



opposition, the applicant or opponent clearly agrees to communications be addressed to him at the said e-mail ID. A message is clearly conveyed to the Registrar that service could be effected even at the said e-mail ID. The words “leaving them at” as employed in Section 143, in my view, have to be read expansively enough to cover service by e-mail where the applicant or the opponent provides an e-mail ID in the application or notice of opposition. In other words, if the applicant or the opponent provides an e-mail ID in the application or notice of opposition, it would not be open to the applicant/opponent to then argue that, though the documents relating to the application or the notice of opposition were sent by e-mail to the said e-mail ID, there has, nonetheless, been no service within the meaning of Section 143 of the Trade Marks Act.

9. In the present case, however, it is not in dispute that no e-mail ID was provided by the appellant in its notice of opposition. As such, it cannot be said that the e-mail ID at which the documents were sent by the Registry constitutes an “address for service” within the meaning of Section 143 of the Trade Marks Act. The Registry of Trade Marks is at liberty to effect service of documents by e-mail only where the party being served has provided an e-mail ID in the application or notice of opposition. Where no such e-mail ID is provided, sending of the documents by e-mail, even if it is in fact sent to the e-mail ID of the party concerned, would not constitute service of documents within the meaning of Section 143 of the Trade Marks Act. “

7. On the other hand, Id. Counsel for the Respondent No.1 submits that in the present case, the Appellant has filed the Form TM-M giving the email address clearly in the said form. He further makes reference to Section 145 of the Trade Marks Act, 1999 which defines the scope of agency, which is given to the agent who is appointed by the Applicant. The said section read



along with Rules 17 to 19 of the Trade Marks Rules, 2017 was referred by the Counsel to argue that once the agent files an address for service in the TM-M form with the email address, the said email address should be deemed to be the address for service for all communications.

8. In the present case, Form TM-M was filed by the Appellant which gave the following as the details of the Agent/Attorney of the matter:-

Annexure - R

225

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FORM TM-M
The Trade Marks Act, 1999
Application/Request for any relief/function in respect of a trademark. Application/Opposition/Rectification under the Trade Marks Act, 1999.

PART A

Applicant or Registered Proprietor/Opponent/Third Party Making the Application/Request	OPPONENT
Name	M/S BALSON (INDIA) LIMITED
Address	M/S BALSON (INDIA) LIMITED
Address for service	M/S. LUDYOG NAGAR, ROHTAK ROAD, DELHI-41 DELHI, INDIA
Address for service	MADANSH & CO. FLAT NO. 101A, SAGAR APARTMENTS, A, TILAK MARG, NEW DELHI-110001 DELHI, INDIA
Mobile No.	9818258400
E-mail address	india@balson.com
AGENT OF THE APPLICANT OR REGISTERED PROPRIETOR/OPPONENT/THIRD PARTY, AS THE CASE MAY BE, (NAME)	
Name	MADANSH & CO.
Address	FLAT NO. 101A, SAGAR APARTMENTS, A, TILAK MARG, NEW DELHI-110001
Mobile No.	9818258400

66-A100-205/81153011470026037M-M

[Signature]



9. Section 145 of the Trade Marks Act, 1999 reads as under;-

“145. Agents

Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is-

(a) a legal practitioner, or

(b) a person registered in the prescribed manner as a trade marks agent, or

(c) a person in the sole and regular employment of the principal.”

10. A reading of Section 145 of the Trade Marks Act, 1999, clearly, suggests that the agent acts on behalf of the Applicant and any act be done for and on behalf of the Applicant can be done by the agent. Accordingly, all acts to be conducted before the Registrar can also be done at the agent's address instead of the Applicant's.

11. Rules 17 to 19 of the Trade Marks Rules, 2017 reads as under:-

*“17. Address for service.— (1) **Every applicant or opponent or any person concerned in any proceeding under the Act or rules shall furnish to the Registrar an address for service in India comprising of a postal address in India and a valid e-mail address and such address shall be treated as the address for service of such applicant or opponent or person:***

Provided that a trademark agent shall also be required to furnish a mobile number registered in India.

(2) Any written communication addressed to a person as aforesaid at an address for service in India given by him shall be deemed to be properly addressed.

(3) Unless an address for service in India as required in sub-rule (1) is given, the Registrar shall be under no obligation to send any notice that may be required by the



Act or the rules and no subsequent order or decision in the proceedings shall be called in question on the ground of any lack or non-service of notice.

18. *Service of Documents by the Registrar. — (1) All communications and documents in relation to application or opposition matter or registered trademark may be served by the Registrar by leaving them at, or sending them by post to the address for service of the party concerned or by email communication.*

(2) Any communication or document so sent shall be deemed to have been served, at the time when the letter containing the same would be delivered in the ordinary course of post or at the time of sending the email.

(3) To prove such service, it shall be sufficient to prove that the letter was properly addressed and put into the post or the email communication was sent to the email id provided by the party concerned.

19. *Agency — (1) The authorisation of an agent for the purpose of section 145 shall be executed in Form TM-M.*

(2) In the case of such authorisation, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so authorising him; all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all appearances before Registrar relating thereto may be made by or through such agent.

(3) In any particular case, the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

(4) In case of withdrawal by the agent from the proceedings or from doing any act for which he has been authorised, in respect of an application or opposition wherein no principle place of business in India is mentioned, the applicant or opponent shall, within a period of two months from the date of such withdrawal, provide an address for service in India. If he fails to provide address for service in India within such period, he shall be deemed to have abandoned the



application or opposition, as the case may be.

(5) In case of revocation of authorisation by the applicant or opponent in respect of an application or opposition wherein no principle place of business in India is mentioned, the applicant or opponent, as the case may be, shall provide the address for service in India within a period of two months from such revocation. If he fails to provide address for service in India within such period, he shall be deemed to have abandoned the application or opposition, as the case may be.

12. A perusal of the above Rules shows that an address for service would include a valid e-mail address and service through e-mail communication shall be deemed to be service upon the Applicant itself.

13. It is now too well settled that service of court pleadings and documents can be made through email. This is recognised in almost all Courts and tribunals. By way of illustration, even as per Chapter VI of the Delhi High Court (Original Side) Rules, 2018, the various modes of Service of notice which clearly includes issuance of notice/ service via e-mail. The rule is set out below:

“1. Service of notice

*(e) (e) Notwithstanding anything contained in Order V rule 10 of the Code, the Court may, in the very first instance, issue summons by registered post (acknowledgement due) **or by authorized courier or by fax or electronic mail service, SMS or any other web based or virtual communication mode** or permit the plaintiff to serve the summons dasti; in addition to the ordinary way. Court may direct service of summons by all modes of service simultaneously or in any combination of any of the modes of service. **For this purpose, the publicly available e-mail address and fax number, either on the website of the party or in public domain/ records shall be deemed to be the correct e-mail address and fax number respectively.***



Thus, as a general proposition, email service is good service so long as the said email address is correct as reflected in the Forms and pleadings filed by the parties.

14. The decision of *M/s Mex Switchgears Private Limited (supra)* is distinguishable on the ground that in the said case it is unclear if a Form TM-M, was given in the said case, stating the email address. Moreover, even in the said decision the observation in paragraph 8 is clear that in the event the e-mail ID is provided, the service on the said e-mail ID would suffice as address for service under Section 143 of the Trade Marks Act, 1999

15. In view of the above legal position, this Court is of the opinion that the appeal is bereft of merit.

16. Ld. Counsel for the Appellant submits that she may be permitted to file a cancellation petition against the trade mark of the Respondent No.1 i.e., 'RRALSON - 2054209, and the said impugned order ought not to come in the way.

17. The status of the said mark has been reflected as registered on the website and it also stands renewed till 16th November, 2030. Accordingly, the Appellant is given liberty to file a cancellation petition. Needless to add the grounds of opposition on merits has not been considered by the Court and no opinion has been rendered.

18. The appeal is dismissed with no order as to costs. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 08, 2023

Mr/bh