

ORDER SHEET

WPO/140/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NABABUDDIN AHMED
VS
THE REGISTRAR OF TRADEMARKS KOLKATA AND ANR

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 12th March, 2024.

Appearance:
Mr. Reetobroto Kumar Mitra, Adv.
Mr. Rudrajit Sarkar, Adv.
Mr. Tamoghna Saha, Adv.
Mr. Shahrukh Ejaz, Adv.
Ms. Vanshika Newar, Adv.
...for the petitioner.

Mr. S.K. Tiwari, Adv.
...for the Respondents.

The Court: Learned counsel for the petitioner contends that the Registered Trademark of the petitioner bearing no.2310588 was removed from the concerned portal by the Registrar of Trademarks without giving the petitioner prior notice as contemplated under Section 25 of the Trade Marks Act, 1999.

Learned Counsel for the respondent authorities submits that the notice was sent to the petitioner but could not be delivered and was uploaded on the official website.

It transpires, as rightly contended by learned counsel for the petitioner, that the endorsement on the envelope which was sent purportedly to the learned advocate for the petitioner returned with the endorsement 'Deceased'.

However, Section 25 of the Trade Marks Act, 1999 read with Rule 58 of the Trade Marks Rules 2017, framed under the said Act, clearly stipulate that at the prescribed time before the expiration of the last registration of a trademark the registrar shall "send notice" in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise, upon which a renewal of registration may be obtained and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trademark from the Register.

Thus, from the very language of Section 25(3), it is evident that the notice contemplated under the said provision cannot mean by any stretch of imagination a publication on a particular website or portal. The expression "send notice" denotes that service of the notice has to be individually effected on the registered proprietor.

That apart, the said expression is suffixed with the term "in the prescribed manner". As the specific mode and manner has been prescribed in the Rules, which contemplates service of the notice individually on the registered proprietor, the uploading of the notice on the website cannot be taken as sufficient compliance of Section 25 read with Rule 58.

Moreover, it has to be taken note of that the contemplation of Section 25 is not a mere notice prior to taking the action of removal but also to give

an opportunity to the petitioner to take remedial measures in order to avoid the removal of the trademark. The removal is effected only if the proprietor fails to avail of such opportunity.

In the present case, since no such individual notice has been served on the petitioner, the very act of removal of the trademark of the petitioner is vitiated due to contravention of the concerned statute.

In such view of the matter, WPO 140 of 2024 is allowed on contest, thereby setting aside the removal of trademark of the petitioner and directing the respondent authorities to immediately restore the Registered Trademark of the petitioner bearing no.2310588.

It is made clear that the respondent authorities shall, after such restoration, be at liberty to comply with the provisions of Section 25(3) of the Trademark Act read with Rule 58 of the Rules and issue a notice giving ample time to the petitioner to rectify defects, if any.

The respondents will be at liberty thereafter, in the event the petitioner fails to comply with such opportunity, to take steps for removal of the trademark in due process and in accordance with law.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)