



(T)CMA(TM)/167/2023
(ORA/SR.59/2021/TM/CHN)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(TM)/167/2023
(ORA/SR.59/2021/TM/CHN)

M/s V-Star Creations Private Limited,
Building No.XII/1B, MES Junction,
South Vazhakulam P.O.,
Aluva, Kerala – 683 105 represented
by its AGM (Finance & Accounts)
Mr.Girish E

... Appellant

Vs.

1.M/s Star Television Productions Limited,
Craigmuir Chambers,
P.O.Box 71, Road Town,
Tortola,
British Virgin Islands.

2.The Register of Trade Marks,
Trade Marks Registry, Chennai,
GST Road, Guindy,
Chennai 600 032.

... Respondents

PRAYER: Transfer Civil Miscellaneous Appeal (Trade Mark) is filed under
Section 91 of the Trade Marks Act, 1999, seeking the following prayer;

a) to call for the entire files relating to Order dated 04-01-2021 of



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the Registrar of Trade Marks, Chennai in the matter of Application for Review against Order of Abandonment in Opposition No.957974 to Trade Mark Application No.2882044 for the mark VSTAR peruse the same and set aside the Order and

- b) Proceed for registration of the Trade mark Application No.2882044 for the mark VSTAR in Classes 2,3,4,10,13,15,16,20,21,22,23,26,27,28,29,31,32,33,34,36,37, 39,40,42,44 and 45 with a user claim from December 01, 1994.

For Appellant : Mr.Bovan Cherian Varkey
for M/s.Marks and Rights

For R1 : No appearance
For R2 : Mr.S.Janarthanam,
Special Panel Counsel

JUDGMENT

This appeal is directed against an order passed by the second respondent in an application for review filed by the appellant to review its earlier order dated 31.01.2019.

2.The facts are as below;

- The appellant herein filed an application to register its mark V-STAR



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under multiple classes, of which, one evoked opposition.

- The appellant did not file its counter statement to the only opposition made under class no.38.
- The allegation of the appellant is that the Registrar of Trade Marks without granting an opportunity of hearing to the appellant, has rushed to hold that the appellant has abandoned its application for registration of its mark in all other classes.
- Therefore, the appellant moved the Registrar of Trade Marks to review its order and it came to be dismissed on 01.01.2021.

3.Heard both sides.

4.The operative portion of the impugned order reads as below;

“I have heard the arguments and have gone through the records of the case. In my considered view, the review petition does not come under ground (i) and (ii) and therefore the case has to be considered under ground no.(iii) namely “for any other sufficient reasons”. When I have gone through the records of the case, it is noticed that the opposition to class-38 was filed by the opponent on 5.11.2018 and the abandoned order was passed



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on 31.1.2018 and despatched on 5.2.2019 and the applicant has filed division of application on 7.2.2019, which is subsequent to passing of such order. The review petition was filed by the applicant on 22.3.2019 along with extension of time TM-M, which is within the extended time limit of two months. It is clear that the applicant has not initiated an action for filing division of application even after receiving opposition for Class-38. As rightly pointed out by the opponent's counsel it would have been done before abandoning the application and failing which, the applicant cannot seek remedy both by filing division of application and by filing review petition. In the circumstances, I do not find any other sufficient reasons to allow the review filed by the applicant and as such, the review petition is disallowed. Accordingly, the abandoned order passed on 31.1.2019 holds good and stands valid. There shall be no order as to costs.”

5.The grievance expressed by the appellant is in one frequency and the above referred to reasoning of the Registrar of Trade Marks runs tangentially in another frequency. This Court is now left with little option but, to set aside the order of the Registrar of Trade Marks.

6.Accordingly, this appeal is allowed and the matter is remanded back to the



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Registrar of Trade Marks to apply its mind to the application of the appellant for registering its mark in all classes except in class 38. This apart, the order of the Registrar of Trade Marks indicates that the appellant has filed a review application. The Registrar of Trade Marks is also required to pass necessary orders in the review application to enable the appellant to proceed with the prosecution of its application in other classes. Since the application for registration was filed sometime in 2015, this Court requires the Registrar of Trade Marks to expedite the process of considering the case of the appellant's application. No costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

N.SESHASAYEE, J.

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