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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.A.(COMM.IPD-TM) 68/2024 & I.A. No. 40389/2024

VACHASPATI TRIPATHI

.....Appellant

Through: Mr. Gaurav Miglani with Mr. Akash Singh, Advocates.

(M): 9871304455

Email: mail@wrbindia.com

versus

REGISTRAR OF TRADE MARKS & ANR.Respondents

Through: Mr. Sumit Nagpal, SPC with Ms. Aastha Sood, Advocate for respondent no. 1.

(M): 9911995000

Email: mail@sumitnagpal.in

Mr. Rajat Sinha with Mr. Utkarsh Dwivedi, Advocates for respondent no. 2.

(M): 7081999045

Email: utkarsh.dw@outlook.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

25.11.2024

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1. The present appeal has been filed against the order dated 01st July, 2024 passed by the learned Assistant Registrar of Trade Marks, wherein, the Opposition No. 1164292 filed by the appellant to Application No. 3300425, has been dismissed for non-prosecution.

2. Learned counsel appearing for the appellant submits that an application was duly filed on behalf of the appellant seeking adjournment before the Assistant Registrar of Trademarks, on personal grounds of the



counsel for the appellant, having to travel out of station. He submits that despite the Trade Marks Rules, 2017, providing for provision for adjournment for not more than two occasions, the opposition filed by the appellant has been dismissed for non-prosecution, ignoring the fact that the said adjournment request was only the second request, made on behalf of the appellant.

3. Per contra, learned counsel appearing for the respondent no. 2 vehemently opposes the present appeal. He submits that the appellant has been prolonging the matter. He submits that as per the Trade Marks Rules, 2017, the application for adjournment has to be made at least three days prior to the date of hearing, which was not done in the present case. He further submits that adjournment cannot be claimed, as a matter of right.

4. Learned counsel appearing for respondent no. 1 submits that the respondent no. 1 shall be bound by the orders of this Court, and has no objection, if the present appeal is allowed, so that the matter could be heard by the Trade Marks Registry, on merits.

5. I have heard learned counsels for the parties and have perused the record.

6. At the outset, it is to be noted that vide order dated 01st July, 2024, the opposition proceedings filed on behalf of the appellant, were dismissed for want of prosecution, by holding that none had appeared for the appellant before the Trade Marks Registry.

7. However, it is to be noted that an application for adjournment was duly filed on behalf of the appellant herein before the Trade Marks Registry, which is on record before this Court. The said application for adjournment was filed on 25th May, 2024, seeking adjournment of the hearing, which was



fixed for 27th May, 2024. The ground of adjournment filed on behalf of the appellant, was that the learned counsel appearing for the appellant, who had to appear before the Trade Marks Registry in the opposition proceedings, was out of station at that point of time, due to some personal reason.

8. Rule 50(2) of the Trade Marks Rules, 2017, clearly makes a provision for adjournment before the Registry, which shall not be on more than two occasions. Rule 50(2) of the Trade Marks Rules, 2017, reads as under:-

“xxx xxx xxx

50.

2) A party to a proceeding may make a request for adjournment of the hearing with reasonable cause in Form TM-M accompanied by the prescribed fee, at least three days before the date of hearing and the Registrar, if he thinks fit to do so, and upon such terms as he may direct, may adjourn the hearing and intimate the parties accordingly:

Provided that no party shall be given more than two adjournments and each adjournment shall not be for more than thirty days.

xxx xxx xxx”

9. Perusal of the aforesaid clearly manifests that the Trade Marks Rules, 2017, themselves make a provision for adjournments, which shall not be given on more than two occasions. Though, this Court is agreeable with the submission made by learned counsel appearing for respondent no. 2 that adjournment cannot be claimed as a matter of right, however, in the present case, this Court notes that an adjournment slip had been duly moved by the learned counsel appearing for the appellant before the Trade Mark Registry, clearly stating the personal difficulty of the counsel.

10. This Court also notes the submission made by learned counsel appearing for the appellant that the request made by the appellant before the Trade Marks Registry was genuine, and that there was no attempt by the appellant to prolong the proceedings in any manner. Further, this Court also



takes note of the submission made by learned counsel appearing for the appellant that the appellant's agent had also appeared on 27th May, 2024 through video conferencing, to apprise the learned Assistant Registrar of Trade Marks, with respect to the application for adjournment.

11. Thus, it cannot be said that the present is a case of non-prosecution, when from the records it is manifest that the opposition proceedings in question, were being contested vehemently, before the Trade Marks Registry.

12. Considering the submissions made before this Court, the following directions are issued:-

I. The impugned order dated 01st July, 2024, passed by Assistant Registrar of Trade Marks, is set aside.

II. The opposition proceedings vide application no. 1164292, are restored.

III. The Trade Marks Registry is directed to reflect the status of application no. 3300425, as opposed.

IV. The certificate of registration sealed on 01st July, 2024, is directed to be recalled and cancelled.

V. The opposition no. 1164292 shall be decided expeditiously, on merits.

VI. The appellant herein shall not take any adjournment before the Trade Marks Registry.

13. With the aforesaid directions, the present appeal, along with pending application is disposed of.

MINI PUSHKARNA, J

NOVEMBER 25, 2024/c