

2. The issue that arises for consideration in the present petition is in a narrow conspectus. The relevant facts leading upto filing of the petition are that, admittedly the last day of the four months period available to the petitioner under Section 21 of the Trade Marks Act, 1999, for filing a notice of opposition fell on a

national holiday i.e. 15th August 2024. According to the petitioner, when an attempt was made to file the notice of opposition on the record of respondent No.1 on its online portal on 16th August 2024 i.e. the immediate next working day, the filing was not accepted. Consequently, the petitioner was constrained to send the said notice of opposition by speed post at 17:56 hours on 16th August 2024, which was received on 19th August 2024 in the office of respondent No.1.

3. The respondent No.1 refused to accept the said notice of opposition treating it as not filed within the four months period. The respondent No.1 sent communication on 19th August 2024 to the petitioner that since the said notice of opposition was time-barred, it could not be accepted. Aggrieved by this situation, the petitioner filed Writ Petition (Lodging) No. 27653 of 2024 before this Court, which was taken up for consideration by a Division Bench.

4. In the meanwhile, on 28th March 2024, the petitioner also filed an Interlocutory Petition before the respondent No.1 with a prayer to take the notice of opposition on record.

5. The Division Bench of this Court, by an order dated 18th October 2024, disposed of the writ petition, recording the fact that such an Interlocutory Petition had been indeed filed. The Division Bench of this Court directed that the Interlocutory Petition shall be decided by the respondent No.1, on its own merits and that all issues were kept open.

6. It is in pursuance of the said order that the respondent No.1-Registrar of Trade Marks passed the impugned order. By the impugned order, the respondent No.1 dismissed the Interlocutory Petition, *inter alia*, recording that since the notice of opposition along with fee was not received in the office of respondent No.1 on 16th August 2024, it was deemed that no such document had been filed.

7. Mr. Kamod, learned counsel appearing for the petitioner submitted that the respondent No.1 has adopted a hyper-technical approach in this matter, particularly in the light of the admitted position on facts that the petitioner had indeed dispatched the notice of opposition through speed post on 16th August 2024 at 17:56 hours to the office of the respondent No.1 at Mumbai. It was submitted that such a step was taken on behalf of the petitioner immediately on the next working day after the national holiday i.e. 15th August 2024. The specific case of the petitioner is that an attempt was made to file such notice of opposition on 16th August 2024 on the portal of respondent No.1, but since the software calculates four months without taking into account the contingency of holidays, the same was not taken on record. It was submitted that there was substantial compliance with the requirement of law and therefore, the respondent No.1 ought to have allowed the Interlocutory Petition and notice of opposition ought to have been taken on record.

8. It was submitted that after the hearing on the Interlocutory

Petition was conducted, the petitioner came across an order dated 7th January 2025 passed by the Delhi High Court in a similar situation, when notice of opposition could not be filed on the portal of respondent No.1, due to the fact that the last day fell on 15th August 2024. The Delhi High Court order dated 7th January 2025 passed in WP(C)-IPD-27/2024 (*Malpani Enterprises v/s. Registrar of Trade Marks*) was relied upon to contend that this very respondent No.1 was aware about the approach adopted by the Court and therefore, the Interlocutory Petition of the petitioner ought not to have been dismissed. It was submitted that the petitioner is entitled to be heard on merits and therefore, this Court may consider allowing the petition to pave the way for a contest on merits before respondent No.1. It was indicated that in the present case, the respondent No.2 had no locus to oppose the prayer made in the present petition as the controversy was really between the petitioner and the office of respondent No.1.

9. On the other hand, the learned counsel appearing for respondent No.1 relied upon the affidavit in reply sworn on 9th April 2025 on behalf of respondent No.1. It appears that the said affidavit in reply could not be placed on record. Leave is granted to e-file the same within one week from today.

10. Since the original affidavit in physical form was produced for the perusal of this Court, the contents thereof have been perused. It was submitted by the learned counsel appearing for respondent No.1 that in the present case, the contentions raised

on behalf of the petitioner have been improvised after the order dated 7th January 2025 was passed by the Delhi High Court in the aforesaid case of ***Malpani Enterprises v/s. Registrar of Trade Marks*** (supra). By referring to the contents of the Interlocutory Petition filed before the respondent No.1, it was highlighted that no submissions were made with regard to any technical glitch in the portal of respondent No.1 or any attempt made on behalf of the petitioner to file its notice of opposition on the said portal online on 16th August 2024. It was conceded that 15th August 2024 being a national holiday, the last date for filing notice of opposition for the petitioner stood extended to 16th August 2024. But, in the absence of any attempt being made by the petitioner to file such a notice of opposition online on the said portal, according to the respondent No.1, the petitioner cannot raise any grievance in the matter.

11. It was further highlighted that the speed post was dispatched at 17:56 hours on 16th August 2024, which was beyond the working hours of the office of the respondent No.1 and therefore, on the said ground also the petition deserved to be dismissed. It was further indicated that the petitioner could very well have physically placed the notice of opposition on record of the Delhi office of respondent No.1 and therefore, the contentions raised on behalf of the petitioner ought not to be accepted.

12. The learned counsel appearing for respondent No.2 vehemently submitted that in the present case, the petitioner had

long period of four months to file notice of opposition. The petitioner was very well aware about the application for registration of trade mark filed on behalf of the respondent No.2. The petitioner chose to wait till the last date and even on the last date, due to its own recalcitrance, it lost the opportunity to place its notice of opposition on record. This resulted in valuable rights crystallizing in favour of the respondent No.2 and this aspect ought not to be ignored. It was submitted that nowhere has the petitioner placed before the respondent No.1 a positive assertion of having made an attempt to file the notice of opposition on the portal of respondent No.1 online on 16th August 2024. In that light, it was submitted that the petition ought to be dismissed.

13. This Court has considered the rival submissions in the face of the admitted facts. It is an admitted position on facts that the last date of the four months period available to the petitioner to file its notice of opposition fell on a national holiday i.e. 15th August 2024. It cannot be disputed and as a matter of fact, the respondent No.1 has not disputed that in such circumstances, the time period was extended to the next working day i.e. 16th August 2024. It is also an admitted position and this is evident from the order passed by the Delhi High Court in case of ***Malpani Enterprises v/s. Registrar of Trade Marks*** (supra) that the software of the portal of respondent No.1 automatically calculates the dates. The software obviously does not take into account such a contingency when the last date of filing falls on a national holiday

or other holiday. In fact, the order of the Delhi High Court records that when a pointed query was put to the respondent No.1 regarding such a technical glitch on the online portal, the same was not denied.

14. Much has been said by both the respondents about absence of proper pleadings on behalf of the petitioner to show that an attempt was made on its part to file its notice of opposition on the portal of respondent No.1 by online method. But, this Court is of the opinion that the said aspect pales into insignificance in the face of the admitted position that the portal of respondent No.2, due to the nature of its software, is unable to accept filing in such a situation. It is meaningless to contend that the petitioner did not elaborately plead as to the attempt to file its notice of opposition on the portal of the respondent No.1 by the online method when it would admittedly have been a stillborn exercise. In fact, the respondent No.1 has also conceded that in such a situation, the notice of opposition could have been placed on record only through physical mode.

15. If that be so, merely because the speed post packet containing the notice of opposition was dispatched by speed post at 17:56 hours on 16th August 2024, it cannot be said that the same could not be accepted by the respondent No.1 as having been filed within the four months period available to the petitioner to file such a notice of opposition. The respondent No.1 has obviously adopted a hyper-technical approach in the matter by

claiming that even the speed post packet should have been dispatched within the working hours of the office of the respondent No.1 at Mumbai. Even if it was so, the speed post packet dispatched from Delhi would not have instantaneously reached the office of the respondent No.1 at Mumbai. It is to be noted that in this case also it reached only on 19th August 2024.

16. This Court fails to understand the approach of respondent No.1 in the facts and circumstances of the present case. It appears that the approach of the respondent No.1-authority is not only hyper-technical, but it appears to be working at cross purposes with the whole object of giving an opportunity to a party to place on record its notice of opposition, so that the controversy can put to rest on merits.

17. The respondent No.2 obviously is interested in avoiding a contest on merits. Therefore, it is harping upon the notice of opposition having been filed by the petitioner beyond the period of four months specified under the Trade Marks Act. The allegations of negligence and the petitioner not acting with alacrity are all misplaced, so long as the petitioner is able to make out a case of having abided by the period of four months provided by the statute for placing on record the notice of opposition.

18. In fact, this Court agrees with the approach adopted by the Delhi High Court in almost identical circumstances, as it serves the ends of justice.

19. As regards the lack of appropriate pleadings on the part of the petitioner on the aspect of attempts having been made to file its notice of opposition online on the portal of respondent No.1 on 16th August 2024, this Court finds that the contents of the writ petition filed on behalf of the petitioner, which was disposed of by the Division Bench of this Court, read along with the contents of the Interlocutory Petition filed before the respondent No.1 and specifically the contents of the written submissions placed on record before the said respondent, sufficiently demonstrate that appropriate pleadings were indeed on record and that the respondent No.1 ought not to have adopted such a hyper-technical approach in the present matter.

20. In view of the above, the petition is allowed in terms of prayer clauses (a) and (b), which read as follows :

“a) quash the order dated January 28, 2025 letter under reference no 3509/29/01/2025 issued by the Respondent No. 1;

b) Direct the Respondent No. 1 to take into record the notice of opposition filed by the Petitioner against application number 5369451 and let the opposition proceeded as per Rules;”

21. Needless to say, as a consequence, the registration certificate issued in favour of the respondent No.2 stands cancelled.

22. It is made clear that this Court has not made any observations on the merits of the matter that would be contested before the respondent No.1.

MANISH PITALE, J.