



W.P.(IPD)No.9 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(IPD)No.9 of 2025
and W.M.P.(IPD)No.7 of 2025

R.Dilip Kumar

... Petitioner

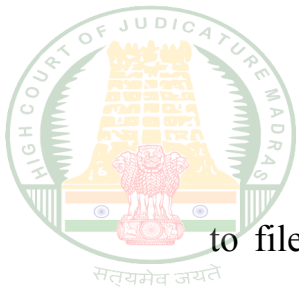
-VS-

1. The Registrar of Trademarks,
Trade Marks Registry, Intellectual Property Office
Building, G.S.T.Guindy, Chennai 600032.

2. M/s. Sun Pharma Laboratories Limited,
Sun House, 201 B/1,
Western Express Highway,
Goregaon (East), Mumbai-400 063.

.. Respondents

Prayer: Writ Petition (IPD) filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records contained in order dated 16.12.2024, passed by the 1st respondent in respect of the application No.5309591, for word mark PIRALEX, filed by the petitioner under the Trademarks Act, 1999 and to quash the same as illegal, and unjust, and arbitrary and contrary to the principles of natural justice and consequently direct the 1st respondent to grant the petitioner an opportunity



W.P.(IPD)No.9 of 2025

to file a counter statement to Notice of Opposition bearing No. 1338315.

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For Petitioner : Mr. S.Nelson

For R1 : Mr. Rajesh Vivekananthan, DSG

For R2 : Mr. S.Diwakar

ORDER

By this writ petition, an order dated 16.12.2024 concluding that Application No.5309591 in class 5 is deemed as 'abandoned' is impugned.

2. Learned counsel for the petitioner submits that the above mentioned application was filed on 01.02.2022 for the word mark PIRALEX. In response, he states that the examination report dated 10.03.2022 was received by the petitioner. Such report was responded to on 24.03.2022. Thereafter, he submits that the application was accepted for advertisement and such advertisement was published in the trade mark journal on 01.04.2024. Learned counsel further states that the petitioner was unaware that a notice of opposition had been lodged until receipt of the impugned



W.P.(IPD)No.9 of 2025

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3. In these circumstances, he contends that the petitioner has been deprived of the valuable right of obtaining registration merely on account of inability to respond to the notice of opposition due to non receipt thereof.

4. Learned counsel for the Registrar of Trademarks has placed on record a document pertaining to the despatch of e-mails in respect of opposition No.1338315. The said document indicates that notice of opposition was despatched to the e-mail address of counsel for the petitioner on 29.07.2024. However, learned counsel admits that there is no proof of receipt of such e-mail by the petitioner.

5. Learned counsel for the opponent/2nd respondent submitted that the opposition was treated as abated and that the same be restored, if the Court is inclined to set aside the impugned order.



W.P.(IPD)No.9 of 2025

WEB COPY

6. In *Ramya S. Moorthy v. Registrar of Trademarks and another*, order dated 10.08.2023, W.P.(IPD)Nos.3 & 4 of 2023, I dealt with a case wherein the facts and circumstances were substantially similar. After noticing that sub-section (2) of Section 21 of the Trade Marks Act, 1999 stipulates that the time limit of two months for the trade mark applicant to file a counter statement runs from the date of receipt of the notice of opposition, I concluded that Rule 18(2) of the Trade Marks Rules, 2017 is not in consonance with the statutory prescription, inasmuch as it provides for deemed service upon despatch of e-mail to the trade mark applicant. After further recording that the substantive right of the trade mark applicant is at stake, I allowed the writ petition. The petitioner herein, who is similarly situated, is also entitled to similar relief.

7. By the impugned order, it was also recorded that the opposition abates. On account of restoring the trade mark application, it is just and necessary that the opposition be restored.

8. For reasons aforesaid, W.P.(IPD)No.9 of 2025 is allowed by



W.P.(IPD)No.9 of 2025

WEB COPY

quashing the order impugned herein. As a corollary, Application No.5309591 and Opposition No.1338315 are restored to the file of the Registrar of Trademarks for reconsideration. The petitioner is permitted to file the counter statement in response to the notice of the opposition within a maximum period of one month from the date of receipt of a copy of this order. The Registrar of Trademarks is directed to reconsider the matter on merits after providing a reasonable opportunity to the petitioner and the 2nd respondent herein.

9. In order to avert a repetition of the present scenario, it would be appropriate for the Controller General of Patents, Designs & Trademarks to adopt a technical solution whereby proof of receipt of the e-mail by the recipient is available to the Registrar of Trademarks. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.04.2025

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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W.P.(IPD)No.9 of 2025

SENTHILKUMAR RAMAMOORTHY,J

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To

The Assistant Registrar of Trademarks,
Trade Marks Registry, Intellectual Property Office
Building, G.S.T.Guindy, Chennai 600032.

W.P.(IPD)No.9 of 2025
and W.M.P.(IPD)No.7 of 2025

03.04.2025

6/6