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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.A.(COMM.IPD-TM) 11/2025 and I.A. 6893/2025

ACADIAN SEAPLANTS LIMITED

.....Appellant

Through: Ms. Shahana Farah, Ms. Varsha
Dhami and Ms. Amruta Padhi,
Advocates

versus

**THE REGISTRAR OF
TRADEMARKS, DELHI & ANR.**

.....Respondents

Through: Mr. Gaurav Barathi, SPC for R-1 with
Mr. Rahul Sharma, G.P. for R-1
Mr. Vaibhav Vutts, Ms. Aamna
Hasan, Ms. Aarya Deshmukh and
Ms. Mahima Chanchlani, Advocates
for R-2

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

28.04.2025

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1. This appeal has been filed under Section 91 of the Trade Marks Act, 1999, against the order dated 5th September, 2024, passed by the Trade Mark Registry in opposition no.1292516 for TM-Application No.4738695.
2. By way of the impugned order, the Trade Mark Registry has held that the statement made in the affidavit filed by the appellant during the time of hearing on 5th September, 2024, is false. The impugned order also holds that counter statement filed by the appellant is time-barred.
3. Accordingly, the Trade Mark application has been deemed to have

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been abandoned. The operative part of the impugned order is set out below:-

“Upon perusal of the documents, it is found that the Applicant has filed an affidavit in which the Applicant states, "That while updating the status of the trademark on July 5, 2024, I found that the opposition had been filed...". However, the counter statement submitted by the Applicant is signed on July 4, 2024. As a result, the statement made in the affidavit cannot be relied upon, raising doubts about the sanctity of the affidavit. Furthermore, the Applicant has not provided any corroborating evidence to substantiate the claim that they did not receive the counter statement.

On perusal of records, it is apparent that the applicant has failed to submit TM-O (Counter Statement) in support of the application within the time prescribed therein under section 21 (2) of The Trade Marks Act, 1999. However, the applicant has filed the TM-O (Counter Statement) on 05/07/2024 which is apparently time barred. Hence, it can't be taken on record.

I deem it fit and proper to proceed further under section 21 (2) of The Trade Marks Act, 1999.

In view of the above facts, the applicant shall be deemed to have abandoned his application. It is hereby ordered that the instant application is treated as abandoned. Consequently, the instant opposition abates.”

4. Counsel for the appellant submits that insofar as the wrong mentioning of the date of 5th July, 2024, in the affidavit is concerned, the same is a typographical mistake. It is submitted that the correct date should have been 3rd July, 2024 and not 5th July, 2024.

5. On the aspect of filing of the counter statement being time-barred, it is submitted that the appellant never received the email enclosing the notice of opposition from the Trade Marks Registry.

6. It was during the routine status check on the portal of the Trade Marks Registry that the appellant discovered that an opposition has been filed by the respondent no.2.

7. Immediately, the appellant prepared a counter statement and the same was filed on 5th July, 2024.

8. Issue notice.

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9. Notice is accepted by counsel for respondents no.1 and 2.
10. Counsel for respondent no.1 defends the impugned order and submits that it has correctly been observed in the impugned order that the counter statement was not filed in a timely manner, as also the date mentioned in the affidavit was patently wrong.
11. I have heard the counsel for the parties.
12. My attention has been drawn to the affidavit filed on behalf of the appellant, which has been referred to in the impugned order (page 84 of the appeal paper book). The relevant extract from the said affidavit is set out below:-

“iv. That while updating the status of the trademarks on July 5, 2024 I found that the Opposition had been filed and that a purported notice was sent on April 15, 2024, however, no such notice has been received by us. Accordingly, I wrote an email on the same date, i.e. July 5, 2024, about the Notice of Opposition not being served upon us. Copy of the email is annexed as ANNEXURE 1.”

13. I am in agreement with the submissions of the appellant that there appears to be an apparent mistake in the date of 5th July 2024, mentioned in the aforesaid paragraph of the affidavit. The record bears out that the counter-statement was filed on behalf of the appellant in the early hours of 5th July, 2024, and therefore, the date mentioned in the aforesaid paragraph of the affidavit should have been an earlier date.
14. Further, in the affidavit filed by the appellant, the appellant has clearly stated that the appellant did not receive email dated 15th April, 2024, sent by the Trade Marks Registry. The relevant extract from the affidavit is set out below:

“v. That I have checked all our entire email boxes, including spam etc., and we are unable to locate any such mail from the

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Registrar of Trademarks or the Opponent dated April 15, 2024 or any time thereafter.”

15. Recently, in **Mars Incorporated v. The Registrar of Trade Marks**, C.A.(COMM.IPD-TM) 88/2024, I have held that the time-period prescribed under Section 21(2) of the Trade Marks Act, 1999 for filing counter statement would begin from the date when the notice of opposition has been served upon the applicant. In the said case, since the notice of opposition was not served upon the appellant, the impugned order treating the subject trade mark application therein as abandoned was set aside.

16. On the basis of the material on record, I am satisfied that the appellant has been able to show that the notice of opposition was not served upon the appellant either by email or any other mode of communication.

17. Keeping in mind the principles of natural justice, I am of the view that an opportunity must be given to the appellant to put forth its case on merits.

18. Accordingly, the present appeal is disposed of with the following directions:-

- i. The impugned order dated 5th September, 2024, is set aside.
- ii. The counter statement filed on behalf of the appellant on 5th July, 2024, shall be taken on record.
- iii. A fresh affidavit shall be filed on behalf of the appellant in place of the affidavit filed on 05th September, 2024, within one week from today.

19. Pursuant to the aforesaid directions, the opposition filed against the subject application shall thereafter proceed as per the provisions of the Trade Marks Act, 1999 and the Rules.

20. The Registry of this Court is directed to supply a copy of the present

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order to the Office of the Controller General of Patents, Designs and Trade Marks on e-mail ID - llc-ipo@gov.in, for compliance.

AMIT BANSAL, J

APRIL 28, 2025
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