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

% *Date of decision: 5th March, 2025*

+ C.A.(COMM.IPD-TM) 106/2022

DR SMITA NARAM

.....Appellant

Through: Dr. Sheetal Vohra, Advocate.

versus

REGISTRAR OF TRADEMARKS AND ORSRespondents

Through: Ms. Nidhi Raman, CGSC with Mr. Gokul Sharma, Mr. Zubin Singh and Mr. Debasish Mishra, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present appeal has been filed under Section 91 of the Trademarks Act, 1999, impugning the order passed by the Trademark Registry on 5th April, 2016, whereby the opposition no. DEL 129200 dated 8th October, 2003 filed on behalf of the appellant has been dismissed under Rule 56(4) of the Trademark Rules, 2002.
2. The aforesaid opposition had been filed by the appellant against the application no.701490 dated 13th May, 1996 for the mark 'AYURSHAKTI' filed by the respondent no.3.
3. Brief facts necessary for deciding the present appeal are set out below:



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- 3.1. The appellant came across the respondent no.3's application for the mark 'AYURSHAKTI' advertised in the Journal 29th June, 2003.
- 3.2. The appellant opposed the aforesaid application by filing opposition no. DEL 129200 on 8th October, 2003.
- 3.3. The appellant received a letter dated 10th October, 2003 from the respondent no.1 on 17th December, 2003, informing the appellant that the notice of opposition had been served on the respondent no.3.
- 3.4. the appellant's advocates received the copy of the counter statement filed by the respondent no.3 under the cover letter dated 13th April, 2004 from Respondent no.1.
- 3.5. The appellant filed her evidence by way of affidavit dated 26th June, 2004 on 5th July, 2004.
- 3.6. Thereafter the Trade Marks Registry issued the first hearing notice dated 13th October, 2015 in the aforesaid opposition for the hearing scheduled on 5th November, 2015.
- 3.7. In the aforesaid hearing, the respondent no.1 called upon the appellant to show proof of having received the counter-statement on 5th May, 2004 in order to justify that the evidence filed by the appellant on 5th July, 2004 was within the prescribed statutory timeline.
- 3.8. Pursuant to the aforesaid, the appellant filed an application under the Right to Information Act, 2005 (RTI) dated 31st December, 2015 requesting the respondent no.1 to provide the actual date of dispatch of the counter-statement in the said opposition along with the photocopies of the relevant pages of the dispatch register.



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3.9. The appellant received a reply from the respondent no.1 on 22nd February, 2016 stating that the counter-statement in the said opposition was dispatched on 13th April, 2004 and the dispatch details/copy of the dispatch register of the year 2004 could not be traced.

3.10. While a response to the RTI application from the respondent no.1 was awaited, the respondent no.1 issued two hearing notices dated 26th November, 2015 and 9th January, 2016 scheduling hearings in the opposition on 22nd December, 2015 and 2nd February, 2016 respectively.

3.11. As the appellant's advocates had not received any reply to their RTI application, the appellant's advocates filed two Form TM 56 on 18th December, 2015 and 8th February, 2016 to grant adjournments in the aforesaid hearings.

4. The appellant received the impugned order dated 5th April, 2016 on 19th August, 2016 wherein it was stated that none appeared on behalf of the appellants for the hearings scheduled on 9th February, 2016 and 5th April, 2016 despite hearing notices dated 11th January, 2016 and 10th March, 2016. It was also stated that no requests for adjournments were made on behalf of the appellant. Therefore, the opposition filed by the appellant was dismissed on account of non-prosecution by the appellant under Rule 56(4) of the Trademark Rules, 2002.

5. Briefly stated, it is the case of the appellant that the appellant did not receive the hearing notice for the hearing scheduled on 5th April, 2016. In this regard, the appellant places reliance on various responses of the Post



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Office to the RTI applications filed on behalf of the appellant. The said responses have been exhibited as Exhibits P and Q along with the present appeal. It is further stated that the subject application is still pending before the Trademark Registry as it has been opposed by other parties.

6. Ms. Nidhi Raman, counsel appearing on behalf of the respondents no.1 and 2 submits that the impugned order has been passed correctly as the appellant failed to respond to multiple hearing notices. She has drawn attention of the Court to the dispatch register maintained by the Trade Marks Registry in terms of which, hearing notices were duly sent to the appellant.

7. I have heard the counsel for the parties.

8. Even though the extracts of the dispatch register maintained by the Trade Marks Registry shows that the hearing notices were dispatched to the appellant, a perusal of various RTI applications and the response thereto suggest that the appellant did not receive the hearing notices. It is clear that appellant was vehemently opposing the registration right from the year 2003 and therefore, appellant would not have missed the hearing. In any case, the impugned mark is yet to be granted registration on account of other oppositions filed against the said application.

9. In these circumstances, in my view, it would be in the interest of justice that a fresh hearing also be given to the appellant in support of the opposition filed by the appellant.

10. Accordingly, the impugned order dated 5th April, 2016 is set aside. The opposition filed by the appellant being opposition no. DEL 129200 shall be restored and a fresh hearing notice would be issued to the appellant by



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the Trade Marks Registry. Consequent to the hearing, the Trade Marks Registry shall decide the said opposition on merits.

11. The Registry is directed to send a copy of the present order to the office of the Controller General of Patents, Designs and Trade Marks at the e-mail 'llc-ipo@gov.in' for compliance.

12. The appeal stands disposed of in the aforesaid terms.

AMIT BANSAL, J

MARCH 5, 2025

Vivek/-