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

+ **C.A.(COMM.IPD-TM) 3/2024 with I.A. 903/2024**

RAJ VARDHAN PATODIA (HUF)

.....Appellant

Through: Mr. C. M. Lall, Senior Advocate with
Mr. Kunal Vajani, Mr. Kunal
Mimani, Mr. Anshuman Gupta, Mr.
Prashant Alai, Advocates.

versus

REGISTRAR OF TRADE MARKS & ANR.

.....Respondents

Through: Mr. Sumit Nagpal, SPC with Ms.
Aastha Sood, Advocate for R-1.
Mr. Manish Singhal, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

18.03.2025

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1. The present appeal has been filed under Section 91 of the Trade Marks Act, 1999 (hereinafter 'Act') challenging the order dated 12th September, 2023 (hereinafter 'impugned order') in trade mark opposition no.1024552 and trade mark application no.3353986.

2. By way of the impugned order, the aforesaid opposition filed on behalf of the appellant was deemed to have been abandoned under Rule 45(2) of the Trade Marks Rules, 2017 (hereinafter 'Rules') on the ground that the appellant/ opponent did not file the evidence affidavit in support of opposition within two months from the date of service of the counter statement.



3. The relevant extracts from the impugned order are set out below:

“An opportunity has also been provided to the Opponent by fixing a hearing on 05.09.2023 to explain that why the above opposition should not be abandoned under rule 45(2). Counsel for the opponent failed to provide any substantive justification in this regard, but simply denied the service of counter statement. Perusal of the record shows that TM-6/counter statement was served by registry on 15.12.2021 to the Opponent. The said copy of dispatch letter as well as the counter statement was also uploaded on the official website of the Trademark Registry thereafter. The above mentioned opposition is, therefore, deemed to have been abandoned under Rule 45(2) of the Trade Marks Rules 2017. The above mentioned application shall proceed further as per rules.”

4. Mr. C.M. Lall, senior counsel appearing on behalf of the appellant, submits that the impugned order has erroneously proceeded on the ground that it was the appellant's case that it had not been served with the counter statement. It is submitted that the case of the appellant was, in fact, that it had received the counter statement on 15th December, 2021 and its evidence affidavit in support of opposition was duly sent within the statutory period of two months.

5. In this regard, attention of the Court has been drawn to the evidence affidavit in support of opposition notarized on 29th January, 2022 and the cover letter dated 1st February, 2022 with which the aforesaid affidavit was sent to the Trade Marks Registry with a copy to the respondent no.2/ applicant. Along with the cover letter, the appellant has also filed the courier receipts evidencing that the aforesaid affidavit along with the cover letter was sent through courier to the respondent no.2 as well as the Trade Marks Registry.

6. Attention of the Court has also been drawn to the affidavit dated 5th



September, 2023 of the attorney of the appellant, which was filed before the Trade Marks Registry. The relevant extracts of the same are set out below:

“4. Thereafter, it appears that a letter dated 15.12.2021 was received from the Trade Mark Office, New Delhi, under cover of which a Counter Statement was received by us and then we prepared and filed the Affidavit giving Evidence in support of Opposition with the Trade Mark Office, New Delhi. The Affidavit was notarized on 29.01.2022. We attach a copy of the DTDC letter indicating that they had couriered two packages, one to the Trade Mark Office, New Delhi, and the other to M/s Signatureglobal (India) Pvt. Ltd., New Delhi at their Barakhamba Road office.

*5. It appears that the documents couriered to the Applicant and to the Trade Mark Office, New Delhi, have been **misplaced / lost in transit during the Covid Era**. Under the above circumstances it is respectfully submitted that the Opponent may be granted permission to file the said Affidavit giving Evidence on behalf of the Opponent afresh and thereafter the documents be taken on record and the matter proceeded further in accordance with law.”*

7. Mr. Manish Singhal, counsel appearing on behalf of the respondent no.2, submits that in the present case, neither the Trade Marks Registry nor the respondent no.2 received the courier. He further submits that the appellant has not filed the tracking report of the courier.

8. Mr. Sumit Nagpal, counsel appearing on behalf of the respondent no.1 submits, that the fact that the appellant has dispatched the evidence affidavit in support of opposition is not sufficient and the appellant should ensure that the same is delivered to the Trade Marks Registry.

9. Rule 45 of the Rules provides that the opponent shall file the evidence affidavit in support of opposition within two months from receipt of the copy of the counter statement.

10. Rule 14 of the Rules provides for service of documents. The relevant part of the said Rule is set out below:



“14. Service of documents.- (1) All applications, notices, statements, papers having representations affixed thereto, or other documents authorised or required by the Act or the rules made thereunder, served, left or sent, at or to the Trade Marks Registry or with or to the Registrar or any other person may be delivered by hand or sent through the post by a prepaid letter or may be submitted electronically in the manner as laid down by the Registrar.

(2) An application or document so sent shall be deemed to have been made, served, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post.

(3) In proving such send, it shall be sufficient to prove that the letter was properly addressed and put into the post.”

[emphasis supplied]

11. A perusal of the aforesaid Rule would show that the sender of a document is only required to show that the document was properly addressed and put into the post.

12. Based on the material on record, I am satisfied that the appellant has been able to show that the evidence affidavit in support of opposition was sent to the Trade Marks Registry and the respondent no.2 on 1st February, 2022 and 2nd February, 2022 respectively.

13. The principles of natural justice also require that the aforesaid opposition filed on behalf of the appellant be considered on merits.

14. In view of the above, the impugned order dated 12th September, 2023 is set aside and the opposition filed on behalf of the appellant against the trade mark application bearing no. 3353986 is restored. A copy of the evidence by way of affidavit dated 29th January, 2022 sent by the appellant along with the cover letter dated 1st February, 2022 as well as the annexures shall be physically filed with the Trade Marks Registry within one (1) week, with a copy to counsel for the respondents.

15. The respondent no.2 shall file its evidence in support of application by



way of an affidavit as per the Rules.

16. Consequently, the registration granted in favour of the respondent no.2 in trade mark application bearing no. 3353986 is cancelled.

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

18. The Registry is directed to supply a copy of the present order to the Trade Marks Registry, at e-mail: llc-ipo@gov.in, for compliance.

AMIT BANSAL, J

MARCH 18, 2025

Vivek/-