

# Romil Gupta Trading As Sohan Lal Gupta vs Registrar Of Trade Marks & Anr on 25 January, 2023

**Author: Sanjeev Narula**

**Bench: Sanjeev Narula**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

C.A.(COMM.IPD-TM) 1/2023

ROMIL GUPTA TRADING

AS SOHAN LAL GUPTA

Through:

Mr. Rajshekhar Rao, Se  
with Mr. Sagar Chandra  
Kumar, Ms. Aanchal Tik  
Shubhi, Ms. Ankita and  
Advocates

versus

REGISTRAR OF TRADE MARKS & ANR.

..... Respond

Through: Mr. Geetesh Meena, Mr. Dipanker  
Pokhriyal and Ms. Ritika Chopra,  
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 25.01.2023

1. Since counsel for Respondent No. 2 has appeared, the caveat stands discharged.

I.A. 1533/2023 (under Section 151 of Code of Civil Procedure, 1908 seeking exemption from filing certified/legible/taped copies of documents along with affidavit)

2. Exemption is granted, subject to all just exceptions.

3. Appellant shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

4. Accordingly, the application stands disposed of.

I.A. 1531/2023 (under Section 151 of CPC seeking leave to file additional documents)

5. This is an application seeking leave to file additional documents under the Commercial Courts

Act, 2015.

6. Appellant, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

7. Accordingly, the application stands disposed of.

I.A. 1532/2023 (under Order XLI Rule 27 read with Section 151 of Code of Civil Procedure, 1908 seeking leave to file additional documents)

8. Issue notice. Mr. Geetesh Meena, counsel accepts notice on behalf of Respondent No. 2. Issue notice to Respondent No. 1, upon filing of process fee, by all permissible modes, returnable on 10th July, 2023.

C.A.(COMM.IPD-TM) 1/2023 & I.A. 1530/2023 (seeking stay)

9. The present appeal under Section 91 of the Trade Marks Act, 1999 [hereinafter, "the Act"] impugns order dated 15th December, 2022 [hereinafter, "impugned order"] passed by Deputy Registrar of Trademarks, whereby Appellant's mark " " has been cancelled and its Trademark Application No. 3986970 has been directed to be re-examined.

10. Appellant had originally obtained registration of the mark " ". Later, under Rule 37 of the Trade Marks Rules, 2017, form TM-M was filed for amending the said mark to " " [hereinafter, "Appellant's mark"]. This request was allowed, and amended mark was advertised. Thereafter, on receipt of Respondent No. 2's complaint dated 23rd July, 2020, alleging improper registration of the Appellant's mark, the Deputy Registrar invoked suo moto powers under Section 57(4) of the Act and issued a notice on 31st October, 2022, and then passed the impugned order.

11. Mr. Rajshekhar Rao, Senior Counsel for Appellant, submits that the impugned order is ex-facie arbitrary and contrary to the provisions of the Act. He emphasises that in the infringement suit filed by Respondent No. 2 in respect of Appellant's mark before the District Court, injunction was refused. Respondent No. 2 then filed form TM-O seeking rectification/ cancellation of Appellant's mark, which is presently pending. Mr. Rao argues that during the pendency of rectification proceedings, there was no basis for the Deputy Registrar to invoke suo moto powers under Section 57(4) of the Act to cancel Appellant's mark. The Deputy Registrar did not provide Appellant adequate time to respond, and in haste, now removed Appellant's mark, which was on the register for almost two and a half years. That apart, even the complaint, basis whereof the impugned order has been passed, is not in conformity with prescribed format.

12. Issue notice. Mr. Geetesh Meena, counsel accepts notice on behalf of Respondent No. 2. He states that Deputy Registrar has decided Respondent No. 2's rectification petition itself by way of the impugned order. He is however unable to support this contention from the documents on record.

Mr. Meena states that he received the paper-book only day before yesterday and would need time to examine the record and clarify this issue. Let reply be filed within four weeks from today. Rejoinder thereto, if any, be filed within two weeks thereafter.

13. Issue notice to Respondent No. 1, upon filing of process fee, by all permissible modes, returnable on the next date of hearing. Respondent No.1 shall file reply, if any, within four weeks from the date of service. Rejoinder thereto, if any, be filed within two weeks thereafter.

14. For the reasons noted above, it is directed that till the next date of hearing, the impugned order dated 15th December, 2022, shall remain stayed and Appellant's mark under application No. 3986970 is restored on the register.

15. List before the Joint Registrar on 24th March, 2023 and before Court on 10th July, 2023.

SANJEEV NARULA, J JANUARY 25, 2023 nk