

Tula Ram Ram Rakshpal vs Amritdhara Pharmacy Ltd., Dehra Dun on 13 November, 1953

Equivalent citations: AIR1954ALL720, AIR 1954 ALLAHABAD 720

Bench: Raghubar Dayal, V. Bhargava

ORDER

1. This is an appeal against the decision of the Registrar under Section 15, Sub-section (4) of the Trade Marks Act, 1940, refusing to register the trade mark sought to be registered by the appellant. Section 76 of the Act gives the right of appeal against any decision of the Registrar under the Act to the High Court having jurisdiction. The appeal has been filed as an appeal against an order and Court-fee paid is Rs. 3/12/-.

2. The Stamp Reporter made a report to the Taxing officer requiring direction on certain points. The Taxing Officer seems to have ordered, verbally that it be laid before Court. One of the points is whether this appeal should be treated to be a regular first appeal or as a first appeal from order. If it is treated as a first appeal from order the other point raised was whether it should be cognizable by a single Judge or a Bench of two Judges. The third question was about the amount of court-fee necessary on this appeal. According to the office note once the nature of appeal is decided there would not be any difficulty about considering the proper provision of the Court-fees Act applicable to this case. Any way the question of proper court-fees would be for the decision of the Taxing Officer or the Taxing Judge on a reference by the Taxing Officer.

3. We have heard learned counsel for the appellant on the question as to whether this appeal should be treated to be a regular appeal, that is an appeal against a decree or it should be treated to be an appeal from an order and we agree with his submission that this should be treated as an appeal from an order.

The proceedings in which this order was passed arose out of an application requesting the registration of the trade mark. The Registrar after hearing the objection of the other party gave a decision that the trade mark should not be registered on account of its similarity to another registered trade-mark. The proceedings cannot, therefore, be said to amount to a suit and it is difficult to say that the decision related to any rights of the parties. Rights will arise in the party whose suggested trade mark is registered after such registration. It is also not clear that any decision of the Registrar on the point in dispute will have any finality in the sense that, in any future dispute in a regular suit or otherwise, this order of the Registrar, will be taken to be conclusive between the parties with regard to the point decided. There is nothing in the Act which makes such an order conclusive.

In the circumstances we hold that this order under appeal does not amount to a decree and is simply an order and therefore the appeal should be treated as a first appeal from an order.

4. As it is not possible to assess the valuation of the appeal it cannot be said that the valuation of this appeal is less than Rs. 2000 and that therefore it is within the cognisance of a single Judge. It follows' that this appeal is within the cognisance of a Bench of two Judges. The office will take further action.