

M/S Aman Engineering Works vs Registrar, Trade Marks, Trade Marks ... on 23 July, 2020

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ C.M.(M) 388/2020

M/S AMAN ENGINEERING WORKS

..... Petitioner

Through Mr. Nipun Saxena and Ms. Serena
Sharma, Advocates.

versus

REGISTRAR, TRADE MARKS, TRADE MARKS REGISTRY,
NEW DELHI & ANR. Respondents

Through Mr. Gaurang Kanth, Central Govt.
Standing Counsel with Ms. Biji
Rajesh, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 23.07.2020 Hearing has been conducted through Video Conferencing. C.M. No. 16169/2020 (Exemption from filing duly affirmed affidavits and Court Fee) & C.M. No. 16170/2020 (Exemption from filing legible typed & certified copies) These Applications have been filed seeking exemption from filing duly affirmed affidavits, legible typed & certified copies and requisite Court Fee. The Applications are disposed of with a direction to the Applicant to file the same within 72 hours from the date of resumption of regular functioning of the Court.

C.M.(M) 388/2020 & C.M. No. 16168/2020 Petitioner herein is a registered Partnership Firm that started its operations on 01.01.1980 in the field of manufacturing, supply and sale of Water Meters and started using the wordmark 'KRANTI' as its logo and trade name. Petitioner Firm got the registration on 01.07.1980 as a Partnership Firm under Form-A of Rule-5 read with Section 59 of Indian Partnership Act, 1932.

An Application was filed on 17.09.1990 for Registration of the Trademark under Class 9. The word 'KRANTI' was registered under Class 9 on 17.09.1990 and the Trademark came to be renewed subsequently from time to time and, as averred in the petition is valid upto 17.09.2024.

On 16.06.1994, an Application came to be filed by M/s B.M. Meters Private Limited i.e. Respondent No. 2 herein for registration of the wordmark 'RITE KRANTI' under Class 9 vide Application No. 631248. The Examination Report was filed by the Trade Mark Registry which raised various objections under the then Trade & Merchandise Act (now the Trade Marks Act, 1999). One of the objections raised was that there existed Trademark by the name of 'KRANTI', bearing Application No. 537044. A Reply was filed by Respondent No. 2 to the Examination Report and thereafter, a hearing Notice was issued to Respondent No. 2 on 09.07.2002, which was not attended by Respondent No. 2.

The said Application, according to the Petitioner, stood abandoned by efflux of time.

On 28.07.1997, another Application was filed by Respondent No. 2 for registration of wordmark 'B&M KRANTI' under Class 9, vide Application No. 765101. Notice of hearing was issued by Respondent No. 2 for 03.09.2003 and 11.08.2006, which was again not attended to by Respondent No. 2. The Application stood abandoned by efflux of time.

After an alleged delay of over 25 years from the date of the Examination Report, an Application came to be preferred by Respondent No. 2 on 31.08.2019 for review of Registrar's decision, after an inordinate delay of 17 years of abandoning the Application relating to wordmark 'RITE KRANTI'. On the same day, another Application came to be preferred for review of the decision, after an alleged inordinate delay of 16 years, for abandoning the Application relating to wordmark 'B&M KRANTI'.

Two separate Notices were issued to Respondent No. 2 by the Registry and hearing was fixed for 17.09.2019.

By the impugned orders, both dated 07.01.2020, the Senior Examiner of Trademarks/Respondent No. 1, herein, has not only entertained the Applications for review but has also allowed the review Applications. These are the two Orders which are assailed before this Court by the Petitioner.

Grievance of the Petitioner is that the Senior Examiner of Trademarks has no jurisdiction to condone the delay which is beyond the Statutory period of limitation of 30 days, extendable by another 30 days, by virtue of Rule 119 of the Trade Mark Rules, 2017.

It is further argued by Mr. Nipun Saxena, Learned Counsel for Petitioner that although the Application was filed on the ground that the hearing Notice was not received by Respondent No. 2, but there is not a whisper in the Application as to when Respondent No. 2 came to know about alleged abandonment of Trademark Applications.

Learned Counsel for the Petitioner also argues that when there is a maximum period of limitation prescribed in the Statute, it is not open to the Authorities to condone the delay if it is beyond the maximum period, so stipulated.

Learned Counsel relies on the judgement of the Constitutional Bench of the Supreme Court in the matter of New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Private Limited, 2020

SCC OnLine SC 287, in which it is clearly held that where a Statute prescribes an outer limit for a particular action to be undertaken, then the outer limit cannot be increased by the Tribunal or a Quasi-Judicial Authority, more so, if no provision confers upon the Authority any such power to extend the timeline.

Mr. Nipun Saxena also argues that the Impugned Orders are to the detriment and prejudice of the Petitioner in as much as while he has filed objections before the Senior Examiner, but in so far as the Impugned Orders of reviewing the Applications are concerned, those cannot be assailed before the Senior Examiner and thus the only remedy available is by way of a Writ Petition before this Court.

Mr. Gaurang Kanth, appearing on an advance copy of the Petition, on behalf of Respondent No. 1 submits that it is not correct for Learned Counsel for Petitioner to contend that the Examiner has no powers to extend the period of limitation beyond the maximum period of 60 days. He draws the attention of the Court to Section 131 (c) of the Trade Marks Act, 1999 read with Rule 109 of the Trade Marks Rules, 2017.

He further submits that the objections to the registration were invited by the Examiner and the Petitioner has already filed his objections in accordance with law and every opportunity will be given to the Petitioner to contest his case before the Examiner. Thus no prejudice has been caused to the Petitioner.

Issue Notice.

Mr. Gaurang Kanth accepts Notice on behalf of Respondent No. 1 and seeks a period of four weeks to file reply. Let reply be filed within a period of four weeks from today. Rejoinder, if any, be filed before the next date of hearing.

Issue notice to Respondent No. 2 by all permissible modes, returnable on 13.10.2020.

It is open to the Petitioner to serve Respondent No. 2 through electronic mode for the next date of hearing.

Having heard Learned Counsels for the parties, this Court is of the view that the issue of the jurisdiction of the Senior Examiner to condone delay beyond maximum period of 60 days provided under the Rules, requires consideration. It is also required to be tested how the delay of over 16 years has been condoned and the review Applications allowed.

Having heard the Learned Counsels, this Court is of the view that the Petitioner has made out a prima facie case in its favour.

Accordingly, operation of the Impugned Orders dated 07.01.2020 passed by the Senior Examiner of Trademarks, Trade Mark Registry Delhi in TM-M Review Application in Application No. 631248 and Application No. 765101, and effect of its consequential orders is stayed till the next date of hearing.

List on 13.10.2020.

JYOTI SINGH, J JULY 23, 2020/yo