

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

Reserved on: 17.10.2022

Date of decision: 04.11.2022

+ **CM(M)-IPD 5/2021 & CM 16168/2020**

MS AMAN ENGINEERING WORKS

..... Petitioner

Through: Mr.Ashish Dholakia, Sr. Adv.
with Mr.Nipun Saxena, Mr.Archit
Adlakha, Ms.Somya Saxena,
Mr.Akash Pawar, Advs.

versus

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

..... Respondents

Through: Mr.Vikram Jetly, CGSC with
Ms.Shreya Jetly, Adv. for R-1.
Mr.C.M.Lall, Sr. Adv. with
Mr.Abhinav Bhatia, Ms.Ananya
Chug, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed challenging the orders dated 07.01.2020 passed by the learned Senior Examiner of Trade Marks, Delhi in TM-M Review Applications nos. 631248 for the mark “**RITE KRANTI**” [review filed by the respondent no. 2 against order dated 09.07.2002] and 765101 for the mark “**B&M KRANTI**” [review filed by the respondent no. 2 against order dated 11.08.2006], allowing the aforementioned review applications filed by the respondent no. 2.

2. By the application no. 631248 filed on 16.06.1994, the respondent no. 2 applied for the registration of the mark “**RITE KRANTI**” in Class 9 with respect to “*water meters, oil meters, gas meters, speed meters and*

meters of all types”. An Examination Report dated 05.10.1999 was issued by the respondent no.1 communicating the grounds of objection to the registration of the mark. Subsequently, vide an order dated 09.07.2002 the application was dismissed as “*abandoned*”.

3. By the application no. 765101 filed on 28.07.1997, the respondent no. 2 had applied for the registration of the mark “**B&M KRANTI**” in Class 9 with respect to “*water meters, oil meters, gas meters, speed meters and other meters of all types and all other goods included in class 9*”. An Examination Report dated 05.02.2003 was issued on this application by the respondent no. 1 communicating the grounds of objection to the registration of the mark. This application was also eventually dismissed as “*abandoned*” vide order dated 11.08.2006.

4. The respondent no. 2 applied for a review of the above orders vide applications dated 31.08.2019, *inter alia*, on the ground that though the Reply to the Examination Report had been filed by the previous Attorney of the respondent no.2, neither the respondent no. 2 nor its Attorney had received the hearing notices dated 09.07.2002 [for application no. 631248] and 11.08.2006 [for application no. 765101] and, therefore, the applicant/respondent no. 2 in the petition could not attend the hearing in the applications on the said dates. The respondent no. 2 also contended that the orders of refusal of the applications were not served on the respondent no.2.

5. The impugned orders allowing these review applications are almost verbatim. The order passed by the learned Senior Examiner of Trade Marks, as far as application no. 631248 is concerned, is reproduced hereinunder:-

“An application for registration of trade mark consisting of word” RITE KRANTI” was filed by the aforesaid Applicant under application No 631248 in respect of applied goods included in Class - 9. The application was examined and examination report containing the objections to the acceptance of application for registration of trade mark was communicated to the Applicant. On the request of the Applicant, a hearing was fixed in this matter. Eventually on 16 September 2019, the application came up before me for hearing and the order was passed accordingly.

*The present petition on form **TM-M** has been filed for review of the order dated.*

Made submission that applicant never received the examination report, affidavit to this effect also filed, review allowed on the basis of affidavit.

*The request on form **TM-M** is accordingly Allowed.*

Sealed and signed at the Trade Marks Registry, Branch Delhi on dated: 07 January 2020.”

Submissions on behalf of the learned senior counsel for the petitioner

6. The learned senior counsel for the petitioner submits that while in the review applications it was admitted by the respondent no. 2 that the Examination Report had been received by it and even a reply thereto had been filed, the review applications have been allowed by the respondent no.1 on the ground that the Examination Report was never received by the respondent no. 2. He submits that this is an error apparent on the face of the record. He further submits that even otherwise and more fundamentally, Rule 119 of the Trade Marks Rules, 2017 (hereinafter referred to as the ‘Rules’) provides that an application for review can be

filed “*within one month from the date of the decision or within such further period not exceeding one month thereafter as the Registrar may on request allow*”. In the present case, the review applications were filed almost seventeen years (for application No. 631248) and sixteen years (for application No. 765101) after the rejection orders, dismissing the applications filed by the respondent no. 2 seeking registration of its marks as “*abandoned*”. The applications were, therefore, were not only barred by limitation, but also the respondent no.1 had no power to condone the delay. Placing reliance on the judgment of the Supreme Court in ***New India Assurance Company Limited. v. Hilli Multipurpose Cold Storage Private Limited***, (2020) 5 SCC 757, he submits that where the statute prescribes an outer limit within which a particular action is to be undertaken, such as the condonation of delay, the said outer limit cannot be increased by the Tribunal/Quasi-Judicial Authority and thus, delay beyond the said period cannot be condoned by the authority. He submits that the respondent no.1 cannot condone the delay beyond this outer limit relying upon its power under Section 131(1) of the Trade Marks Act, 1999 (hereinafter referred to as the ‘Act’). In this regard, he places reliance on the judgment of this Court in ***Surinder Corporation, U.S.A. v. Hindustan Lever Limited & Anr.***, 2007 SCC OnLine Del 1018.

Submissions on behalf of the learned senior counsel for the respondent no. 2

7. On the other hand, the learned senior counsel for the respondent no.2 submits that though the review applications had been filed on the

ground that the Examination Reports had been received and replied to, however, the Notice of Hearing had not been received by either the respondent no.2 or its Attorney and that the said admission was a mistake. Later affidavits were filed by the respondent no.2 stating that it had not received the Examination Report as well. Relying upon the said affidavit, the respondent no.1 condoned the delay as this was a material irregularity committed by the respondent no.1 in passing the impugned orders dismissing the applications of the respondent no.2 seeking the registration of their marks as 'abandoned'. The service of a Notice of Hearing as also the order passed is mandatory, as held by the High Court of Bombay in *Institute of Cost Accountants of India v. Registrar of Trade Marks and Another*, 2013 SCC OnLine Bom 362 and by this Court in *Gopal Ji Gupta v. Union of India and Another*, 2019 SCC OnLine Del 7670.

8. He further submits that the general power of condonation of delay, vested with the respondent no. 1 under Section 131 of the Act, cannot be curtailed by Rule 119 of the Rules. As far as an application for review is concerned, Section 127(c) of the Act does not prescribe any period of limitation for filing of the same, therefore, the respondent no. 1 has power to condone the delay, if any, in filing of an application seeking review of an order, and such power cannot be curtailed by Rule 119 of the Rules. In this regard, he places reliance on the order of the erstwhile-learned Intellectual Property Appellate Board (in short, 'IPAB') in *Sahil Kohli v. Registrar of Trade Mark and Another*, 2018 SCC OnLine IPAB 55.

9. He further submits that even otherwise, the petitioner had no *locus* to file the present petition as it has an efficacious remedy of filing objections to the applications seeking registration of the marks filed by the respondent no.2 once they are advertised in the Trade Marks Journal.

10. Further placing reliance on the judgment of the Supreme Court in ***Jagatjit Industries Limited v. Intellectual Property Appellate Board and Others***, (2016) 4 SCC 381, he submits that separate reasons on basis of which the Registrar condones the delay under Section 131 of the Act need not be recorded in the order itself in every case. In the present case, therefore, it should be deemed that the learned Senior Examiner of Trade Marks has condoned the delay, if any, in the filing of the review applications by the respondent no.2.

Submissions on behalf of the learned counsel for the respondent no. 1

11. The learned counsel for the respondent no.1, while adopting the submissions made by the learned senior counsel for the respondent no.2, further submits that as there was no record of compliance with Section 132 of the Act, that is, of the service of the Examination Report and the date of hearing on the respondent no.2, available with the respondent no.1, thus, the respondent no.1 rightly allowed the applications seeking review of the orders dismissing the applications of the respondent no.2 seeking registration of its marks. He places reliance on the order dated 14.11.2017 passed by this Court, *inter alia*, in a batch of petitions including W.P.(C) 3043/2016 titled ***Tata Steel Limited v. Union of India & Anr.*** and the order dated 12.03.2021 passed by this Court in W.P.(C) 8298/2020 titled ***Mahesh Gupta v. Union of India and Anr.***, to submit

that therein as well, the orders passed by the Registrar of Trade Marks dismissing the applications as ‘abandoned’ without due service of the notice to the applicants was set aside by this Court.

Rejoinder Submissions on behalf of the learned senior counsel for the petitioner

12. In rejoinder, the learned senior counsel for the petitioner, while reiterating his earlier submissions, submits that the affidavit filed by respondent no. 2 does not state that even the then Attorney of the respondent no.2 had not been served with the Examination Report or the Notice of Hearing. He submits that therefore, no reliance could have been placed on the said affidavits.

13. Further, placing reliance on Sections 157(xxxiv) and (xxxvii) of the Act, he submits that the period prescribed in the Rules for filing of an application seeking for review for an order and/or for seeking condonation of the delay under Section 131 of the Act, is to be treated as being prescribed by the Act itself. He submits that, therefore, the power under Section 131 of the Act vested with the respondent no. 1 is circumscribed and restricted by the Rules. In this regard, he places reliance on the judgment of the Supreme Court in *State of Tamil Nadu v. M/s Hind Stone and Others*, (1981) 2 SCC 205.

Analysis and Findings

14. I have considered the submissions made by the learned counsel for the parties.

15. As far as the objection of the learned senior counsel for the respondent no.2 is concerned to the effect that the petitioner must wait for the application of the respondent no.2 to be advertised and file its objection thereto rather than filing the present petition, in my opinion, the same is ill-founded. Admittedly, the parties are in litigation in a Civil Suit. The revival of the applications of the respondent no.2 seeking registration of its marks shall, therefore, cause prejudice to the petitioner in such Civil Suit. Even otherwise, the plea of the petitioner is that the learned Senior Examiner of Trade Marks had become *functus officio* and had no power to condone the delay of the respondent no.2 in filing of the applications seeking review of the orders by which its applications seeking registration of its marks were deemed to be “*abandoned*” by the respondent no. 1 . This being an issue of jurisdiction, should be decided at an initial stage itself rather than letting the proceedings in those applications being dragged on.

16. On merits, the question to be determined by this Court is as to whether the respondent no. 1 has the power to condone the delay beyond the period prescribed in Rule 119 of the Rules. Section 127(c) of the Act empowers the Registrar to review its own decision. The same is reproduced hereinbelow:-

“127. Powers of Registrar.—*In all proceedings under this Act before the Registrar,—*

(a) xxxxxx

(b) xxxxx

(c) the Registrar may, on an application made in the prescribed manner, review his own decision.”

17. The manner for making the application is prescribed in Rule 119 of the Rules. The same is reproduced hereinunder:-

“119.Application for review of Registrar’s decision.—An application to the Registrar for the review of his decision under sub-section (c) of Section 127 shall be made in Form TM-M within one month from the date of such decision or within such further period not exceeding one month thereafter as the Registrar may on request allow, and shall be accompanied by a statement setting forth the grounds on which the review is sought. Where the decision in question concerns any other person in addition to the applicant, such application and statement shall be left in triplicate and the Registrar shall forthwith transmit a copy each of the application and statement to the other person concerned. The Registrar may, after giving the parties an opportunity of being heard, reject or grant the application, either unconditionally or subject to any conditions or limitations, as he thinks fit.”

18. A reading of the above Rule would show that an application seeking review of a decision of the Registrar of Trade Marks/respondent no. 1 has to be made within a period of one month from the date of such decision or within such further period not exceeding one month thereafter, as the Registrar of Trade Marks/respondent no. 1 may on request allow. Therefore, it sets the maximum outer limit by which the delay in filing of an application seeking review of the decision of the Registrar of Trade Marks/respondent no. 1 can be condoned .

19. In ***New India Assurance Co. Ltd.*** (*supra*), the Supreme Court in relation to the provisions of the Consumers Protection Act, 1986 relating

to the time period for filing of the reply/response to the consumers' complaint held as under:-

“13. On the contrary, sub Section (2)(a) of Section 13 of the Consumer Protection Act provides for the opposite party to give his response ‘within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum’. The intention of the legislature seems to be very clear that the opposite party would get the time of 30 days, and in addition another 15 days at the discretion of the Forum to file its response. No further discretion of granting time beyond 45 days is intended under the Act.

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16. Now, reverting back to the provisions of the Consumer Protection Act to consider as to whether the provision of sub-section (2)(a) of Section 13 granting a maximum period of 15 days in addition to 30 days has to be read as mandatory or not, we may also consider the other provisions of the Consumer Protection Act where the legislature intended to allow extension of period of limitation.

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20. The legislature in its wisdom has provided for filing of complaint or appeals beyond the period specified under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be to the satisfaction of the authority concerned. No such discretion has been provided for under Section 13(2)(a) of the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days). Had the legislature not wanted to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals. To carve out an exception in a specific

provision of the statute is not within the jurisdiction of the courts, and if it is so done, it would amount to legislating or inserting a provision into the statute, which is not permissible.

21. *By specifically enacting a provision under sub-section (3) of Section 13, with a specific clarification that violation of the principles of natural justice shall not be called in question where the procedure prescribed under sub-sections (1) and (2) of Section 13 of the Consumer Protection Act has been followed or complied with, the intention of the legislature is clear that mere denial of further extension of time for filing the response (by the opposite party) would not amount to denial or violation of the principles of natural justice. This provision of Section 13(3) reinforces the time-limit specified in Section 13(2)(a) of the Act.*

22. *This Court in Lachmi Narain v. Union of India [Lachmi Narain v. Union of India, (1976) 2 SCC 953 : 1976 SCC (Tax) 213] has held that : (SCC p. 969, para 68)*

“68. ... If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory.”

Further, hardship cannot be a ground for changing the mandatory nature of the statute, as has been held by this Court in Bhikraj Jaipuria v. Union of India [Bhikraj Jaipuria v. Union of India, AIR 1962 SC 113 : (1962) 2 SCR 880] and Fairgrowth Investments Ltd. v. Custodian [Fairgrowth Investments Ltd. v. Custodian, (2004) 11 SCC 472] . Hardship cannot thus be a ground to interpret the provision so as to enlarge the time, where the statute provides for a specific time, which, in our opinion, has to be complied in letter and spirit.

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24. Further, it has been held by this Court in Popat Bahiru Govardhane v. LAO [Popat Bahiru Govardhane v. LAO, (2013) 10 SCC 765 : (2014) 1 SCC (Civ) 149] that the law of limitation may harshly affect a particular party but it has to be applied with all its vigour when the statute so prescribes and that the Court has no power to extend the period of limitation on equitable grounds, even if the statutory provision may cause hardship or inconvenience to a particular party.

25. The contention of the learned counsel for the respondent is that by not leaving a discretion with the District Forum for extending the period of limitation for filing the response before it by the opposite party, grave injustice would be caused as there could be circumstances beyond the control of the opposite party because of which the opposite party may not be able to file the response within the period of 30 days or the extended period of 15 days. In our view, if the law so provides, the same has to be strictly complied, so as to achieve the object of the statute. It is well settled that law prevails over equity, as equity can only supplement the law, and not supplant it.”

20. This Court, in ***Surinder Corporation, U.S.A.*** (*supra*), while considering the provisions of Section 21(4) of the Act read with Rule 50 of the Trade Marks Rules, 2002 (hereinafter referred to as the ‘old Rules’) observed as under:-

“8. Reading Rule 50, it is clear that the evidence by way of affidavit in support of an opposition to the registration of a trade mark has to be filed within two months of the service of a copy of the counter-statement on the opponent. This period of two months is further extendable by a period of one month in the aggregate thereafter as the Registrar may on request allow. Clearly, in the first instance, the evidence affidavit has to be filed

within two months of the receipt of a copy of the counter-statement. The Registrar may extend this period by a further one month in the aggregate if a request for the same is made in time. Sub-rule (2) of Rule 50 makes it clear that if an opponent takes no action under Sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his opposition. It is also interesting to note that Sub-rule (3) refers to the application for extension of the period of one month mentioned in Sub-rule (1). It is also stipulated that such an application has to be made in Form TM-56 accompanied by the prescribed fee before the expiry of the period of two months mentioned therein. So, it is clear that a strict regimen has been prescribed for the filing of evidence by way of affidavit in support of an opposition. A plain reading of the provisions makes it abundantly clear that the evidence has to be filed within two months in the first instance and, if an appropriate application for extension of time is made before the expiry of the period of two months and if such application is allowed by the Registrar, then latest by a further month. In other words, under no circumstances can the evidence affidavit be filed beyond the maximum three months prescribed under the said rule. In case the opponent has not taken steps within the prescribed time, then there is no option left with the Registrar but to deem that the opponent has abandoned his opposition.

9. *In Chief Forest Conservator (Wildlife) v. Nisar Khan, (2003) 4 SCC 595 : AIR 2003 SC 1867, the Supreme Court held:*

“It is now well settled that when rules are validly framed, they should be treated as a part of the Act.”

10. *There is no doubt that Rule 50 of the 2002 Rules has been validly framed in exercise of the Central Government's rule making powers under Section 157(1) in general and Section 157(2)(vii) in particular. In this background, it can be safely stated that the time and manner prescribed in Rule*

50 of the 2002 Rules should be treated as having been prescribed by the 1999 Act itself.

11. The decisions referred to in the cases of Delta Impex v. Commissioner of Customs, 110 (2004) DLT 209 (DB) , Pranam Enterprises v. Commissioner of Sales Tax, New Delhi v. 111 (2004) DLT 743 and Union of India v. Popular Construction Co., (2001) 8 SCC 470 : AIR 2001 SC 4010 all clearly indicate that where the statute itself prescribes a maximum condonable period, then it would not be open to the authorities under that statute to extend the period for doing an act beyond the prescribed maximum condonable period. It is, therefore, clear that the Registrar does not have any power to extend the time for filing the evidence affidavit beyond the maximum period of one month after the initial period of two months.”

21. In the above judgment, the Court also rejected the reliance of the respondents on Section 131 of the Act as granting an unbridled discretion with the Registrar of Trade Marks to condone the delay.

22. The submission of the learned senior counsel for the respondent no.2 that the above decision would not have an application to Section 127(c) of the Act, inasmuch as, the same dealt with Section 21(4) of the Act which states that the evidence must be filed within the prescribed time and such prescribed time can be in the Rules, whereas, as far as Section 127(c) is concerned, it does not state that the application must be filed within the prescribed time, also cannot be accepted. Section 127(c) of the Act states that the application seeking review should be made in the “*prescribed manner*”. The manner prescribed for making such an application is in Rule 119 of the Rules. If the application is not filed in

the “*prescribed manner*”, that is, including within the period prescribed for filing of such an application, the same cannot be entertained by the respondent no. 1, as the said condition and prescription is mandatory because of the language used in Rule 119 of the Rules.

23. Similarly, the submission of the learned senior counsel for the respondent no.2 that Section 131 of the Act would vest an unbridled power with the Registrar of Trade Marks/respondent no. 1 to condone the delay even beyond the period prescribed in Rule 119 of the Rules, also cannot be accepted. Section 131 of the Act is reproduced hereunder:-

“131. Extension of time.—(1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in this Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.”

24. The above provision has to be read along with Section 157 (xxxiv) of the Act, which is reproduced hereinbelow:-

“157. Power to make rules.—

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(xxxiv) the manner of making an application for review under clause (c) of section 127;”

25. The above provision empowers the Central Government to make Rules to carry out the provisions of the Act, including prescribing the manner of making an application for review under Section 127(c) of the Act. Rule 119 of the Rules has been framed exercising the said power. As held by the Supreme Court in *M/s Hind Stone and Others*, (*supra*), a statutory rule is to be treated as part of the statute and is equally effective. Rules made under the statute must be treated for all purposes of construction or obligations exactly as if they were in the Act and are to be of the same effect as if contained in the Act. The same principle was also accepted by this Court in *Surinder Corporation, U.S.A.* (*supra*), as is reflected in paragraph nos. 9 and 10 of the judgment, quoted hereinabove.

26. Section 131 of the Act empowers the Registrar of Trade Marks/respondent no. 1 to extend the time for doing any act, provided the time period is not expressly provided in the Act. As held by the Supreme Court, as also by this Court in the above referred judgments, the period prescribed under Rule 119 of the Rules has to be considered as one prescribed in the Act itself. The Registrar, therefore, has no power to condone the delay beyond the period prescribed by the said Rule.

27. Reliance of the learned senior counsel for the respondent no.2 on the judgment of *Sahil Kohli* (*supra*) also cannot be accepted. In the said judgment, the learned-erstwhile IPAB was considering Rule 45 of the old Rules and the amendment made thereto in the Rules. The learned-erstwhile IPAB, in fact, distinguished the judgment of this Court in *Surinder Corporation, U.S.A.* (*supra*), observing as under:-

“45. Since the judgment of Sunrider Corporation v. Hindustan Lever supra was rendered by Delhi High Court in the context of interpretation of Trade Marks Rules, 2002 and the respondent has placed heavy reliance of upon the same, therefore, the analysis and interpretation of the new Rules of 2017 is necessary viz a viz the interpretation rendered by the Delhi High Court under the old Rules of 2002 and it is only then the assessment can be made as to whether the interpretation rendered under the old rules of 2002 can be applied to the context of the new rules as it is or not.

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50. On the basis of the interpretation arising from the combined reading of Section 21(4) read with Section 131 and Rule 50 of the Trade Marks Rules, 2002, the Delhi High Court in the case of Sunrider Corporation v. Hindustan Lever Ltd. (supra) came to the conclusion by comparing the Rule 50 which was subsisting under the Trade Marks Rules, 1959 viz. a viz. the changes made in the said Rule by way of amendment in Trade Marks Rules, 2002 that the Registrar's power to extend the time period after the passage of two months has been restricted by way of the amendments carried out in the Rule 50 by limiting the power of Registrar to extend the time period not exceeding one month in aggregate by inserting the words ‘not exceeding one month in aggregate thereafter’ in Rule 50(1) and removing the residual discretion by omitting the words “unless the Registrar otherwise directs”. This has weighed heavily before the Delhi High Court while giving the mandatory effect to the interpretation of Rule 50(1) of the Trade Marks Rules, 2002.

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53. In view of the changes made in Rule 45(1) of the Trade Marks Rules, 2017 and also in view of the discussion arising at points (f) to (j) mentioned in the preceding paragraphs relating to the

interpretation of Rule 45 of the Trade Marks Rules, 2017, the judgment passed in case of Sunrider Corporation v. Hindustan Lever Ltd. (supra.) is clearly distinguishable and is not applicable in view of the changes made in the structure of Rule 45 which omits completely the entire aspect of the registrar discretion of granting the extension and the restrictions, which were imposed earlier in rule 50 of rules of 2002 upon the Registrar's power to extend the time period.

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56. In view of the changes made in the Rules and the language of the Rules including Rule 45, the interpretation rendered in the earlier Rule 50 of the Trade Marks Rules, 2002 which restrictedly discretion of the Registrar to grant of extension of time only to one month period in aggregate is removed and consequently the applicability of the judgment of Sunrider Corporation (supra.) under the new Rules the extension of power has been extinguished or have lost its significance, in view of the change in the language of the newly framed Rule 45 of the Trade Marks Rules, 2017.”

28. The position, however, with regard to Rule 119 of the Rules will continue to be governed by ***Surinder Corporation, U.S.A. (supra)***, as Rule 119, as was the case with Rule 45 of the old Rules prior to its amendment, prescribes the outer limit within which alone the respondent no. 1 can condone the delay. The judgment of this Court in ***Surinder Corporation, U.S.A. (supra)*** would, therefore, fully apply as far as Rule 119 of the Rules is concerned, as it clearly provides that the Registrar of Trade Marks/respondent no. 1 has no power to condone the delay in the filing of an application seeking review beyond expiry of one month from the date of the decision of which review is sought.

29. The learned senior counsel for the petitioner, placing reliance on Section 157(xxxvi) of the Act read with Rule 109 of the Rules, rightly submits that the power of the Registrar of Trade Marks/respondent no. 1 to condone the delay, even otherwise, has been curtailed to only one month of delay. Section 157(xxxvi) of the Act and Rule 109 of the Rules are quoted hereinbelow:-

Trade Marks Act, 1999

“157. Power to make rules.—

xxxxx

(xxxvi) the manner of making an application and the fee payable therefor under sub-section (1) of section 131;

xxxxx

Trade Marks Rules, 2017

“109. Extension of time.—(1) An application for extension of time under Section 131 (not being a time expressly provided in the Act or prescribed by Rule 85 or by sub-rule (3) of Rule 86 or a time for the extension of which provision is made in the rules) shall be made in Form TM-M.

(2) Upon an application made under sub-rule (1) the Registrar, if satisfied that the circumstances are such as to justify the extension of the time applied for, may, subject to the provisions of the rules where a maximum time limit is prescribed and subject to such conditions as he may think fit to impose, extend the time not exceeding one month and communicate the parties accordingly and the extension may be granted though the time for doing the act or taking the proceeding for which it is applied for has already expired.”

30. Rule 109(1) of the Rules prescribes that “*An application for extension of time under section 131 (not being a time expressly provided in the Act or prescribed by rule 85 or by sub-rule (3) of rule 86 or a time for the extension of which provision is made in the rules) shall be made in Form TM- M.*” . As held hereinabove, the time prescribed for the filing of an application seeking review of the decision of the Registrar has been prescribed in the Act in the form of Rule 119 of the Rules. In fact, Rule 109(2) further states that the Registrar, on such an application made under Section 131 of the Act, may extend the time “*not exceeding one month*”. This clearly further circumscribes and restricts the power of the Registrar of Trade Marks/respondent no. 1 under Section 131 of the Act to condone the delay.

31. The submission of the learned senior counsel for the respondent no.2 that in the present case as the Examination Report and the Notice of Hearing was not served on the respondent no.2, which is a mandatory requirement, the respondent no. 1 was within its jurisdiction to review its decision to treat the applications of the respondent no.2 as “*abandoned*”, also cannot be accepted. Apart from the fact that the applications seeking review itself were not maintainable having been filed beyond the time prescribed, even otherwise, in the applications seeking review, the respondent no.2 had admitted to the receipt of the Examination Report and filing of the reply thereto. There was no amendment to the applications sought or made by the respondent no.2. However, affidavits were later filed by the respondent no.2 claiming that even the Examination Report was not received. The respondent no. 1 went on to

entertain the said affidavit, though it was in contradiction to the review applications itself. Further, the said affidavit had been filed by the director of the respondent no.2-company, who stated that he had not received a copy of the Examination Report “*and the examination report was not in my knowledge or of the company*”. There was no assertion in the affidavit that the Examination Report had also not been received by its Attorney, whose address was given in the application for affecting service of any communication of the respondent no. 1. In the absence of such an assertion, clearly, the respondent no. 1 erred in accepting the submission of the respondent no.2 that the Examination Report had not been received by the respondent no. 2.

32. In fact, the reply-affidavit filed by the respondent no.1 to the present petition shows that the respondent no. 1 shifted the burden of proof of service of the Examination Respondent on the respondent no. 2 to itself, though the applications for review were filed seventeen and sixteen years respectively after the orders of the respondent no. 1 dismissing the applications of the respondent no.2 as “*abandoned*”. No explanation was sought from the respondent no.2 on the steps taken by the respondent no.2 for all this period with respect to its applications. The burden of proving service could not have been placed by the Registrar on himself after such a long period of time. An act of the authority must be deemed and presumed to have been done in accordance with the procedure prescribed. Section 114 of the Indian Evidence Act, 1872, reads as under:

“114. Court may presume existence of certain facts.—*The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*

Illustrations

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(e) that judicial and official act have been regularly performed:

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But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it: --

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as to illustration (e) – a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

xxxxx”

33. In *Iqbal Basith and Others v. N. Subbalakshmi and Others*, (2021) 2 SCC 718, it was held that there is a presumption that all official acts have been regularly performed. The onus lies on the person who disputes the same to prove otherwise. In the present case, the respondent no. 2 had clearly failed to discharge this burden and in spite of the same, the respondent no. 1 shifted this burden on itself, though there was an unreasonable delay on part of the respondent no. 2 to move applications seeking review of the original orders.

34. The reliance of the learned counsel for the respondent no.1 on the order of this Court dated 14.11.2017 in a batch of petitions including ***Tata Steel Limited*** (*supra*) and on the order dated 12.03.2021 in ***Mahesh Gupta*** (*supra*) also cannot be accepted as these orders were passed on the respondent no.1 itself having withdrawn its orders for the abandonment of applications passed without due process.

35. The learned senior counsel for the respondent no.2 has also placed reliance on the judgment of ***Jagatjit Industries Limited*** (*supra*), to contend that the Registrar of Trade Marks/respondent no. 1 need not give reasons for condoning the delay in filing of an application seeking extension of time. The said judgment also has no application to the facts of the present case, inasmuch as, what stares at the face herein is the lack of power with the respondent no. 1 to condone the delay itself.

Relief

36. In view of the above, the impugned orders dated 07.01.2020 passed by the learned Senior Examiner of Trade Marks in application nos. 631248 and 765101 are set aside.

37. The petition is allowed. There shall be no order as to costs.

NAVIN CHAWLA, J.

NOVEMBER 04, 2022/rv/Ais/AB