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IN THE HIGH COURT AT JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.913 of 2021

M/s. SKR Food Products,
Represented by its Proprietor,
Mr. RupaniSalim Bhai,
Plot No. 4-26-9 / A / 20,
Wadi-E-Sulemon Nagar,
Rajendranagar, Hyderabad (TS). ..Petitioner

Vs.

1. The Controller General of Patent, Design and Trademarks,
BoudhikSampada Bhavan
Dosti Acres, Antop Hill,
Mumbai - 400 037.

2. The Registrar of Trade Marks,
Government of India,
Trade Marks Registry,
IP Building GST Road, Guindy
Chennai - 600 032.

3. Firoz Ali ...Respondents

Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1st and 2nd Respondents to

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receive the petitioner notice of opposition either by way of electronic / online mode or physical copies as contemplated in the Trade Mark Act, 1999 or the Trade Marks Rules, 2017 framed there under to the registration of Trade mark of the 3rd Respondent advertised in the Trade Mark Journal No. 1968 dated 02.03.2020.

For Petitioner : Mr.Sivakumar.V
For Respondents : Mr.K.Ramana Moorthy
Central Govt. Standing Counsel,
for RR 1 & 2
R3 - Not ready notice

ORDER

Writ petition is filed for issuance of a writ of mandamus, to direct the respondents one and two to receive the petitioner notice of opposition either by way of electronic / online mode or physical copies as contemplated in the Trade Mark Act, 1999 or the Trade Marks Rules, 2017 framed there under to the registration of Trade mark of the 3rd respondent advertised in the Trade Mark Journal No. 1968 dated 02.03.2020.

2. The petitioner is a proprietary concern under the name and style of N.N.Products in the year 1990 at Banjara Hills, Sriramnagar, Hyderabad and adopted the trademark, DIAMOND in relation to ginger garlic paste and obtained registration under the Trademarks Act, 1999 and registration is still

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valid and subsisting having renewed. In the meanwhile, 3rd respondent made application and the same was published in the Trademarks Journal dated 02.03.2020. However, due to Covid pandemic, the petitioner has not made application in time within a period of four months as per Section 21 of the Trademarks Act and he made application only on 08.10.2020 and the same was not considered by the 1st respondent, thereby the present writ petition with the aforesaid prayer.

3. Learned counsel appearing for the petitioner would submit that this court may issue a direction to the respondents 1 and 2 to consider the objections made by the petitioner and to pass appropriate orders.

4. Per contra, learned Central Government Standing Counsel appearing for the respondents 1 and 2 submitted that though the trademark Jubilee DIAMOND was registered before the Trademark Journal dated 02.03.2020, however within a period of four months from the date of publication, the petitioner has to file objection before the 1st respondent to revisit the earlier fixation. However, petitioner made objection only after lapse of four months,

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which is impermissible one. However, there is effective remedy available to the petitioner by way of Appeal before the IPAB under Section 91 of the Trademarks Act, 1999. Accordingly, he prays for dismissal of the writ petition.

5. Heard learned counsel appearing for the petitioner and Central Government Standing Counsel for the respondents 1 and 2. Though the case is of the year 2021, till date notice was not served on the 3rd respondent and considering the pendency of the writ petition, this court inclined to dispose the writ petition based on the available records.

6. The facts in the present case is not disputed. Admittedly, the Trademark in the name and style of JUBILEE DIAMOND published in the Trademarks Journal on 02.03.2020. However, the petitioner made application only on 08.10.2020 opposing for registration of trademark in favour of the 3rd respondent. As per Section 21 of the Act, for initiation of opposition proceeding by any interested person in the journal was within a period of four months. However, petitioner made application beyond the period of limitation. While so,

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as rightly contended by the learned Central Government Standing Counsel appearing for the respondents 1 and 2, the remedy available to the petitioner is only by way of filing appeal before the Appellate Board in the manner known to law. Hence, the prayer sought by the petitioner cannot be granted.

7. However, liberty is granted to the petitioner to make appropriate appeal before the Appellate Board in terms of Section 91 of the Trademarks Act. If such appeal is filed, then the Appellate Board shall consider the appeal and pass appropriate orders in accordance with law.

Writ petition is dismissed and no costs.

14.10.2024

Index:Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
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M.DHANDAPANI,J.

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To

1. The Controller General of Patent, Design and Trademarks,
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