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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

CMA(TM)No.1/2024
& CMP No.708 of 2024

Nicobar Design Private Limited
Rep. by its Director Mr.Harish Chawla
3rd Floor, Select Citywalk, A-3, District Centre
Saket, New Delhi 110017 ... Appellant

Vs.

1.Registrar of Trade Marks
Intellectual Property Building
G.S.T. Road, Guindy, Chennai 600 032

2.Katako Homes LLP
B 203, 2nd Floor, Bwing, Karle Zenith
Sy no.61-1-61-2, 100 ft. Kempapur Mn Rd
Nagawara, Bengaluru, Karnataka 560045 ... Respondents

PRAYER: Transfer Civil Miscellaneous Appeal (Trade Marks) filed under Section 91 of the Trade Marks Act, 1999, praying (a) to admit this appeal; (b) to call for the records of the said impugned application relating to the impugned order and issue an order setting aside / quashing the impugned order dated March 01, 2023, passed by respondent No.1 and direct the respondent No.1 to issue necessary orders for reinstating the opposition proceedings against the impugned application.

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For Appellant : Mr.Ramesh Ganapathy

For Respondents : Mr.S.Janarthanam
SPC - R1

No Appearance - R2

JUDGMENT

This appeal is directed against the order of the 1st respondent dated 01.03.2023, in which he has declared that the appellant's opposition is deemed to have been abandoned. The scope of the case of the appellant falls within a very narrow space.

2.The 2nd respondent herein has applied for registering its mark 'TRANQEBAR CURTAIN' in Class 24. As per procedure, his application has gone to the stage of publication and it was published in the Trade Mark journal. The appellant herein responded to it with its opposition contending therein that it already holds a registered mark 'TRANQEBAR' registered under Class 3 and 4. Now it is obligatory on the part of the Trade Marks Registry to forward the copy of the appellant's opposition to the 2nd respondent. Once the 2nd respondent comes out with its counter then the Registry is required to forward a copy of the counter and then to require the

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opponent to file its evidence. According to the appellant, the copy of the counter statement of the 2nd respondent was not even shared to the appellant. Notwithstanding the same, the 1st respondent had issued a notice of hearing in which the opponent / the appellant herein had participated and was claimed to have informed the 1st respondent that it has not received the copy of the counter. This however, was rejected by the Trade Marks Registry, which would hold that the copy of the counter indeed was forwarded by it to the appellant herein through e-mail on 02.08.2022 and proceed to hold that the appellant has abandoned its opposition. Hence, this appeal.

3.The learned counsel for the appellant submitted that according to the 1st respondent counter was filed on 17.09.2021 and that it was alleged to have been forwarded to the appellant almost after a year, on 02.08.2022. However, the 1st respondent has not demonstrated its allegation about forwarding the copy of the counter statement to the appellant, and has shown an undue enthusiasm to declare that the appellant has abandoned its opposition.

4.Mr.S.Janarthanam, the learned Senior Panel Counsel appearing for the

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Trade Marks Registry submitted that if the presumption in illustration of Section 114 of the Evidence Act can be summoned, it means that all official and ministerial acts are presumed to be done promptly and correctly and if this presumption is applied to the situation here, then burden will be on the opponent / appellant to prove the contra.

5.Howsoever impressive the submissions of the learned counsel for the 1st respondent may appear to be, at the end of the day the learned counsel only requires the appellant to prove the negative something it cannot establish. Therefore, beyond a self saving statement by the Trade Marks Registry, this Court expects something more to be done by it. In all situations where substantial rights of the parties are involved, it would be appropriate to give a benefit of doubt to the parties rather than to the statutory authorities. This Court intends to remind the Trade Marks Registry that it is a statutory functionary and must show utmost sensitivity to the rights of the parties before it, and not to adopt hyper technical disciplinarian attitude. If the Trade Marks Registrar is keen to go by the Rules then how is he going to explain almost a year's delay in forwarding the counter filed by the 2nd

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respondent? This Court does not advocate that the parties should abandon discipline but then he who enforces discipline must also show some degree of respect for discipline at his level.

6.Having said that, this Court is informed immediately on passing the impugned order, the Trade Marks Registrar has proceeded to register the mark of the 2nd respondent. Now, it is open to the appellant to file its application for rectification under Section 57, if it is so desires.

7.This appeal stands allowed accordingly. There is no order as to costs. Consequently, the connected CMP is closed.

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Index : Yes / No
Neutral Citation: Yes / No

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