OD-44

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

TMA/8/2022

UTKRISHTA KUMAR
VS
THE REGISTRAR OF TRADE MARKS

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 18th January, 2023.

Appearance:
Mr. Rishad Medora, Adv.
Mr. Abhirup Chakraborty, Adv.

Mr. Indrajit Dasgupta, Adv.
Ms. Priti Jain, Adv.

The Court:- Supplementary Affidavit filed by the appellant be kept with the records.

This appeal has been filed under Section 91 of the Trade Mark Act, 1999. The appellant assails an order dated 7 September, 2022 dismissing Application no.5113485.

Briefly, the appellant operates a business under the trade name “Glow Science”. The appellant is engaged in the business of manufacturing and selling of natural skincare products which inter alia include cleansers, serums and moisturizers. It is alleged that the appellant has developed natural non-toxic skincare products which are 100% Vegan. The appellant also operates a website

under the domain name <glowscience.in>. In this background, the appellant had applied for registration of the subject trade mark “Glow Science” in Class 3.

By an Examination Report dated 15th September, 2021, the appellant was duly notified that the mark of the appellant was devoid of any distinctive character and was incapable of registration. The application has been rejected on the ground that the mark applied for by the appellant was identical and/or similar to the trademark as mentioned in the Examination Report.

On behalf of the appellant it is submitted that the impugned order is bereft of any reasons. It is contended that the Examination Report has been mechanically followed without discussing the contents thereof. The appellant also contends that the respondent authorities failed to consider the trademark as a whole. The word “GLOW” has only been considered in the impugned order. However, the appellant’s trademark has a suffix “Science” and also a byline “Inspired by Nature | Backed by Science” which has not been taken into consideration. The respondent authorities also failed to consider the submissions made by the appellant to the objection raised by the respondent authorities under section 9 (1)(b) of the Trade Mark Act, 1999. The appellant also contends that unlike the cited trademarks the subject trademark is a composite logo mark and consists of various elements. None of the aforesaid contentions nor judicial precedents cited by the appellant have been considered in the impugned order.

The respondent authorities are represented and submit that there are no reasons in the order and the same be set aside and remanded back for fresh adjudication.

In my view, the conclusion arrived at in the impugned order is not supported by any reasons at all. The Examination Report dated 15 September, 2021 has also not been discussed. None of the grounds urged by the appellant have been considered in the impugned order (*State Bank of India and Anr Vs Ajay Kumar Sood, 2022 SCC Online SC1067*).

In view of the aforesaid, the order dated September 7, 2022 is set aside.

The matter is remanded back to the respondent authorities to consider the application of the petitioner afresh in accordance with law and after giving right to hearing of the authorities. It is expected that the respondent authorities shall dispose of the application of the petitioner within a period of three months from the date of communication of this order.

To the aforesaid extent, TMA/8/2022 stands allowed. However, there shall be no order as to costs.

(RAVI KRISHAN KAPUR, J.)

SK.