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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(TM) No.212 of 2023
(OA/SR.135/2018/TM/(CHN)

Practo Technologies Private Limited
having its office at No.165/5
RPS Green, Dollars Colony
JP Nagar 4th Phase
Bangalore - 560 078 ... Appellant

Vs.

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

Prayer : Civil Miscellaneous Appeal filed under Section 91 of the Trade Marks Act, 1999 to allow the appeal and consequently the Application No.3507314 appellant be allowed and for costs.

For Appellant : Ms.S.Suba Shiny

For Respondent : Mr.S.Janarthanam
Senior Panel Counsel

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JUDGMENT

The grievance of the appellant herein falls within a very narrow compass. The appellant had applied for registering is word mark Insta on 08.03.2017. The registration should have been sought under Class 42 but by mistake, it was sought under Class 44. Beyond that the appellant came to know nothing about it. Only accidentally it came to its notice that the Registrar of Trade Marks, the respondent herein, had made an order on 26.12.2017 to the effect that the application of the appellant was abandoned. The appellant, thereafter, made some research and found from the official website of the respondent that on 30.03.2017, the respondent claims to have issued a notice to the appellant, bringing to the knowledge of the latter about the defect in the Class in which the appellant sought the registration of its word mark, and since the defect was not cured within the stipulated time, the respondent had passed an order that the appellant had abandoned its application for registration. The appellant, thereafter preferred a petition before the respondent to review its order but that came to be dismissed on the ground that it was beyond 30 days time. It is in these circumstances, the appellant has now approached this court

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with this appeal.

2. Heard both sides. The short question is, *whether the respondent had issued the notice dated 30.03.2017?* So far as this Court is concerned, it is not so much about whether the respondent has issued the said notice through e-mail on the said date, but about whether any intimation at all was given either to the appellant or to its agent about the despatch of this e-mail. This Court understoods that this facility is now available but not when the impugned order was passed.

3. This court considers that given the circumstances, it will be only appropriate that the benefit of doubt is given to the appellant and accordingly, this court decides to set aside the order of the respondent dated 29.01.2018 and remands the matter back to the respondent.

4. In fine, this appeal is allowed. The impugned order of the respondent dated 26.12.2017 made in Application No.3507314 is set aside and the matter is remanded to the respondent, to continue the trial. In the meantime, the appellant is directed to carry out necessary correction in its application, if it has not

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already done the same, within a period of 15 days from the date of receipt of a copy of this order. No costs.

20.03.2024

Asr
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

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

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N. SESHASAYEE, J.

Asr

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