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

\+ C.A.(COMM.IPD-TM) 70/2021

JAGRAN PRAKASHAN LIMITED ..... Appellant

Through: Ms. Poonam Atey, Advocate.

versus

THE REGISTRAR OF TRADEMARKS , DELHI..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**O R D E R**

**% 20.04.2023**

**IA No. 7150/2023 (***under Section 91 of Trade Marks Act r/w Section 5 of the Limitation Act, 1963 for delay in appeal 1506 days.*

1. There is a delay of 1506 days on the part of Appellant in impugning order dated 29th March, 2016 whereby Appellant's trademark application No. 2424820 has been deemed to be abandoned, for following reason:

> "*The abovementioned application was examined and the examination report mentioned therein the objection(s) to acceptance of the application for registration of the trademark was posted on the official website and was also sent on 23/04/2015 to the applicant/applicant's authorized agent. The response to the examination report was required to be submitted on behalf of the applicant within one month from the date of receipt of the examination report.*
>
> *It was clearly mentioned in the examination report that if no reply is*



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*received or a request for a hearing is applied for within the above mentioned stipulated time, the said application shall be treated to have been abandoned for lack of prosecution under Section 132 of the Trade Marks Act, 1999 and thereafter the status of the application in the computer database shall reflect the factual position. However no response to the examination report has been received so far either mentioning the applicant's comments on office objections or requesting for hearing.*

*The abovementioned application is therefore deemed to have been abandoned under Rule 38(5) of the Trade Marks Rules, 2002 and the status of the application is changed accordingly in the records of the Trade Marks Registry.*"

2. The reason offered by Appellant for belated filing of the present appeal is as under:

*"It is respectfully submitted that the applicant was not aware of the aforesaid order of refusal dated 29.03.2016 and it came to the notice of the applicant when the Applicant received reply to the cease and desist notice from one Ms. Garima Singh, who has infringed the trademark of the appellant and has applied for the mark JAGRAN MOTORS under application numbers 4071181 and 4101088 in class 12. In her reply Ms. Garima Singh informed that the application of the Appellant under class 12 i.e. application no. 2380329 and 2424820 have been abandoned by the Trademark Registry. Upon knowing the status of the above mentioned applications the Appellant immediately file the present Appeal under section 91 of the Trademarks Act 1999 read with Rule 125 of the Trademarks Rules, 2017."*

3. It is contended that impugned order was not in Appellant's knowledge and thus, they were unable to take appropriate remedy to assail the same. On this point, counsel for Respondent points out that the examination report as well as the order declaring the application to be abandoned, were issued/ dispatched to Appellant as per following details:

| S.No. | Corres. No. | Corres. Date | Subject | Despatch No. | Despatch Date |
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|---|---|---|---|---|---|
| 1. | 2027373 | 23/04/2015 | Dispatching of Examination Report for :2424820 | 1129537 | 23/04/2015 |
| 2. | 3236879 | 29/03/2016 | Abandoned Order for Application No. 2424820 | 1618856 | 29/03/2016 |

4. Considering the above-noted, evidently, the Appellant had sufficient notice of the order dated 29th March, 2016. Ms. Poonam Atey, counsel for Appellant, submits afore-noted notices were perhaps sent to the trademark agent who was earlier acting on Appellant's behalf. Counsel for Respondent controverts this submission, stating that till the date of date of impugned order, no change of agent was notified to the Trademarks Registry, as is evident by the status reflected on their website. In view of the above, the justification that Appellant was not aware of the refusal order is unconvincing and lacks merit. Moreover, Appellant ought to have acted vigilantly while pursuing their registration application.

5. Ms. Atey further contends that several other applications, pertaining to the year 2011 and later, are now being taken up and decided by the Trademarks Registry. Thus, in case the appeal is allowed, no prejudice would be caused to Respondent. She requests that Appellant should not be made to suffer for non-service of the order.

6. The above submission does not impress the Court. Each case has to turn on its own facts. In the given case, the delay of 1506 days has not been explained satisfactorily and only reflects Appellant's negligence and lack of



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due diligence in prosecuting the application. The Court is not inclined to condone this huge delay.

7. Application is dismissed.

**C.A.(COMM.IPD-TM) 70/2021**

8. Since the delay in filing the appeal has not been condoned, the present appeal stands dismissed.

**SANJEEV NARULA, J**

**APRIL 20, 2023**
***cd***



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