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

\+ C.A.(COMM.IPD-TM) 78/2021

SUNWAY BERHAD ..... Appellant

Through: Mr. Saif Khan, Mr. Shobhit Agarwal and Mr. Prajjwal Kushwaha, Advocates.

versus

REGISTRAR OF TRADE MARKS ..... Respondent

Through: Mr. Harish Vaidyanathan, 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

% 19.01.2023

1. Appellant impugns order dated 01st October, 2019 [hereinafter "*impugned* order"] whereby Appellant's application for registration of the device mark ' SUNWAY '(Trade Mark Application No. 3790771) under Class-42 has been refused.

2. Without going into merits of the case, Mr. Saif Khan, counsel for Appellant, states that the impugned order is liable to be set aside as the Senior Examiner has not considered the reply dated 12th June, 2019 which, he submits, contains material facts demonstrating that Appellant had various international registrations for identical marks as well as registration for the

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mark ‘ SUNWAY ’ under various classes.

3. Mr. Harish Vaidyanathan, CGSC for Respondent, states that no such information was disclosed at the time of passing of impugned order and notwithstanding, the application was filed on “proposed to be used” basis and, in that regard, no material was placed on record. Further, he emphasizes that the reply to First Examination Report [“FER”], does not give any details of prior registrations.

4. The Court has heard counsel for the parties. In the opinion of the Court, without going into the merits of the case, since the impugned order does not deal with the contentions urged by Appellant in its above-said reply to the FER, the impugned order is liable to be set-aside and the matter is remanded back to the Senior Examiner for fresh consideration.

5. It is made clear that the Court has not expressed any opinion on the merits of the case. The Senior Examiner shall consider the reply dated 12th June, 2019 and take a decision thereon, in accordance with law within six weeks from today, uninfluenced by the observations made hereinabove.

6. On request of Mr. Khan, Appellant is permitted to file additional documents within two weeks from today, which shall also be taken into consideration by the Senior Examiner.

7. With the fore-going directions, present appeal stands disposed of.

SANJEEV NARULA, J

JANUARY 19, 2023
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