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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(TM)166/2023
(OA/SR.70/2019/TM/CHN)

Societe Des Produits Nestle S.A.
1800, Vevey, Canton of Vaud
Switzerland ... Appellant

Vs.

1.Deputy Registrar of Trade Marks
Trade Marks Registry
Boudhik Sampada Bhawan
G.S.T. Road, Guindy
Chennai 600 032

2.M/s.3F Industries Limited
(Erstwhile M/s.Food Fats & Fertilizers Ltd.)
Post Box No.15, Tanuku Road
Tadepalliguedm, West Godavari Dist.
Andhra Pradesh 534 101 ... Respondents

PRAYER: Transfer Civil Miscellaneous Appeal (Trade Marks) filed under Section 91 of the Trade Marks Act, 1999, praying (i) to set aside the impugned order dated 22nd June, 2018 passed by respondent No.1

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abandoning the opposition no.779230 filed by the appellant against Trade Mark application No.1953046 under class 30 of the respondent No.2; (ii) restore the opposition proceeding no.779230 and direct the respondent No.1 to adjudicate the same on merits; (iii) pass ad-interim exparte order directing the respondent No.1 not to proceed with the grant of registration certificate to respondent No.2's Trade Mark Application No.1953046 under class 30.

For Appellant : Mr.Mr.Manish K.Mishra
for M/s.Inttl Advocate

For Respondents : Mr.S.Janarthanam,
Senior Panel Counsel - R1

M/s..S.Balajanaki - R2

JUDGMENT

This appeal is directed against an order of the Trade Marks Registry, the 1st respondent herein dated 22.06.2018, by which it had declared that the opposition filed by the appellant herein to the application of the 2nd respondent to register its mark is deemed to have been abandoned.

2.The facts are as below:

- On 20.04.2010, the 2nd respondent herein had applied for

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the registration of his mark 

Later it was published in the Trade Marks' journal.

- On 09.03.2011, the appellant had filed its notice of opposition to the Registration of the mark of the 2nd respondent. The Trade Mark Registry promptly intimated the 2nd respondent to file its counter to the appellant's opposition. On 25.07.2011, the 2nd respondent had filed its counter.

- The Trade Mark Registry would now intimate the appellant that the counter had been filed, but according to the appellant a copy of the counter was not enclosed with the notice of filing of the counter. Therefore, on 13.05.2014 the appellant had addressed a communication to the Trade Marks' Registry to furnish it with a copy of the counter.

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- Even as the appellant was awaiting the service of copy of the counter, the Trade Marks Registry issued notices dated 27.06.2016 and 08.07.2016 under Rule 50 of the Trade Mark Rules, 2002 and required the appellant herein to furnish evidence in support of its opposition.

- Since the appellant had not received the copy of the counter even at this point of time, he resumed his frantic efforts to remind the Trade Marks Registry about the same and made its request for supply of a copy of the counter. Along side its request it also preferred an application in the appropriate form prescribed for extension of time for producing evidence. This communication was dated 07.09.2016. The appellant presumed that time had been accordingly extended, which implies the appellant might have to furnish his evidence latest by 08.10.2016.

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- In the meantime, the appellant had secured a copy of the counter and on 07.10.2016 it dispatched its evidence to sustain its opposition to registration of the Trade Mark. To remind the evidence was dispatched one day before the expiry of the time extended for production of evidence by the appellant.

3.The Trade Marks Registry later held enquiry on the opposition and proceeded to dismiss the opposition on the ground that it deemed to have been abandoned as the evidence was not produced within the statutory time prescribed.

4.Heard the learned counsel appearing for the respective parties. The learned counsel for the appellant submitted that evidence has been dispatched by the appellant atleast one day before the expiry of the time for producing evidence. However, the mail was not delivered at the address of the Trade Marks Registry since three consecutive holidays intervened, between 10th October and 12th October, 2016. Eventually the mail

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containing the evidence of the appellant reached the Trade Marks Registry on 13.10.2016 and the Trade Marks Registry has took it as a ground to hold that the appellant had abandoned its opposition for its failure to produce evidence within the stipulated statutory time.

5.It appears the Trade Marks Registry assumes the attitude of a Head Master of a school. It is appreciable that parties while dealing with the Trade Marks Registry abide by the time line statutorily fixed, but then to show intolerance to condone a delay in situations such as the one explained appears that the Trade Marks Registry appears to function like pre-programmed robotic than a human being managing the affairs of human beings. After all, life of law is not always logic and it is experience. If life experience is ignored and law is understood as a piece of legislative invention to be applied mechanically by a set of automated statutory authorities then law will remain but not its soul.

6.It is in this circumstances, this Court is left with very little option than to set aside the order of the Trade Marks Registry. It allows the appeal

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accordingly and sets aside the impugned order and remands the matter back to the Trade Marks Registry for it to consider the opposition of the appellant on its own merit and strictly in accordance with law.

7.Now this Court faces a very disturbing situation. Therefore, in the eventuality of the 2nd respondent succeeding the opposition of the appellant, the time for renewal will start only from the date on which the registration is made and in all such circumstances the renewal fee shall be reckoned only from the date on which the registration is made. There shall be no order as to costs.

07.03.2024

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Index : Yes / No
Neutral Citation: Yes / No

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