HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 17424/2022

Manoj Bhagchandani S/o Late Shri Dayal Das Bhagchandani, Trading As M/s New Khandelwal Dhaba Shop No. 30-31, V.ki. Area, Road No. 8, Jaipur.

----Petitioner

Versus

1. Registrar Of Trade Marks, Government Of India, Trade Marks Registry, Near Chankyapuri Overbridge, Ghatlodia, Ahmedabad- 380061
2. Khandelwal Dhaba, Shop No. 32, 33 Road No. 8, V.k.i. Area, Sikar Road, Jaipur, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. G.D. Bansal, Mr. Dharmendra Kumar Gupta Mr. Aman Goyal
For Respondent(s)	:	

HON'BLE MR. JUSTICE SUDESH BANSAL
Order

06/07/2023

1. By way of instant writ petition filed under Article 226 of the Constitution of India, the petitioner has sought to assail the interim order dated 04.01.2022 passed by the Registrar of Trade Mark, Ahmedabad (hereinafter referred to “the Registrar” which is interlocutory in nature and whereby the miscellaneous application filed by respondent No.2 has been allowed and the affidavit of respondent No.2 dated 26.02.2013 has been allowed to be taken on record in support of opposition by the respondent No.2, to the application for registration of Trademark “Khandelwal Dhaba” (in Hindi), moved by the petitioner.

2. Counsel for the petitioner argued that the impugned order dated 04.01.2022 passed by the Registrar is contrary to provisions

of Rule 45 (Old Rule 50) of the Trade Mark Rule 2017, (hereinafter 'Rules of 2017) and order was passed without appreciating the mandatory provisions specifically Section 128 and 131 of the Trade Mark Act,1999. Petitioner has alleged that the respondent has not explained the delay in filing the affidavit on 26.02.2013 and the Registrar without considering this aspect of the matter has wrongly allowed the interlocutory petition. Counsel for the petitioner in support of his argument has relied on Delhi High Court Judgment ***Mahesh Gupta v. Registrar of Trademark and Anr. (2023/DHC/001627)*** wherein it has been observed that -

> "*if the opponent took no action under Rule 50(1) within the time period mentioned therein - meaning two months extendable by a maximum period of one month - he shall be deemed to have abandoned his opposition*."

3. Heard counsel for petitioner and perused the material available on record.

4. It is a case where the petitioner has filed an application No.1929579 in Class 43 dated 03.03.2010 for registration of Trademark "Khandelwal Dhaba" (in Hindi) and which came to be advertised in Trademark General No.1453 dated 11.10.2010 at page No.4076 and made available to public on 29.10.2010. The said application came to be opposed by the respondent No.2 who claims to have proprietorship of Trademark "Khandelwal Dhaba" (in Hindi) alleging *inter alia* that the same has been adopted by the opponent since 2001 onwards as a Trademark as well as a house Trademark in respect of providing food, drinks, Dhaba and restaurant etc.

5. It appears from the record that respondent No.2 submitted an affidavit dated 26.02.2013 on record in support of his opposition and that additional affidavit has been taken on record

by the Registrar vide impugned order with liberty to the petitioner to submit evidence in support of his application.

6. Form perusal of the impugned order dated 04.01.2022, it is apparently clear and has not been disputed by learned counsel or the petitioner that the petitioner did not appear before the Registrar to oppose the miscellaneous application filed by the opponent to take his affidavit dated 26.02.2013 on record. The petitioner instead of pursuing his application for registration of Trademark of "Khandelwal Dhaba" (in Hindi) before the concerned authority, has chosen to challenge the interlocutory order dated 04.01.2022 which is otherwise a just and equitable order and does not cause any serious prejudice to the petitioner.

7. As far as resort of Rule 45 of Trade Mark Rule, 2017 sought to be taken by the counsel for the petitioner is concerned, had the petitioner been vigilant, he could have taken benefit of the theory of abandonment, before filing affidavit by the opponent on 26.02.2013 before the registering authority itself and such plea cannot be allowed to raise first time in writ petition being lack of factual support on the part of petitioner.

In given facts and circumstances of the present case, arguments sought to be raised by learned counsel for the petitioner in respect of the deemed abandonment of objections by the opponent to his application for registration of Trademark, due to not filing the evidence within the stipulated time pursuant to his objection, cannot be allowed to take at this stage before writ Court and the ratio of law expounded by the Delhi High Court in case of ***Mahesh Gupta (supra),*** may not be held as applicable on facts of the present case.

8. In the fact of present case, the petitioner himself appears to be negligent in pursuing his application for registration which is pending since 2010 before the Registrar and even has not chosen to file any evidence in support thereof, nor raising a plea of abandonment of opposition in time before the Registrar, rather did not appear before the Registrar to oppose the miscellaneous application filed by the opponent to take his affidavit on record as has been observed by the Registrar in the impugned order dated 04.01.2022, therefore, in such facts and circumstances, the challenge to the interlocutory order dated 16.07.2021 by way of filing instant writ petition, is nothing but preposterous and a misuse of process of law on the part of petitioner. A valuable time of the Court has been taken by the petitioner to assail the order dated 04.01.2022, unwarrantedly and due to which cases of other genuine litigants are bound to suffer from hearing in time.

9. In such peculiar circumstances, and for reasons assigned hereinabove, this Court deems it just and proper that the writ petition deserves to be dismissed with exemplary cost of Rs.10,000/- and is hereby dismissed. The cost amount be deposited with the Litigants Welfare Fund, through Demand Draft or Cheque in the name of Registrar General LWFA, Rajasthan High Court within a period of one month.

10. Stay application and any other pending application, if any, stand disposed of.

(SUDESH BANSAL),J

TN/30