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

\+ C.A.(COMM.IPD-TM) 15/2024 & I.A. No.5193/2024

DISPOSAFE HEALTH AND LIFE CARE LIMITED.....Appellant

Through: Mr. Hemant Daswani, Advocate.
(M): 9810556744

versus

REGISTRAR OF TRADE MARKS .....Respondent

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

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 16.08.2024

1. The present appeal has been filed under Section 91 of the Trade Marks Act, 1999 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC") and read with Section 13 of the Commercial Courts Act, 2015 against order dated 29th November, 2023 passed in the trademark application no. 3933703.

2. By way of the present appeal, the appellant has prayed for setting aside of the aforesaid order dated 29th November, 2023 and for directing the Trade Mark Registry to accept application no. 3933703 and advertise the trademark 'DISPOWAY' in the Trade Marks Journal.

3. Learned counsel appearing for the appellant submits that though,

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purportedly, a hearing notice was issued by the respondent to the appellant, however, no such notice was received by the appellant. He, thus, submits that in view thereof, the appellant was unable to attend the hearing before the Registrar of Trademarks. He draws the attention of this Court to the impugned order dated 29th November, 2023, wherein, it has been recorded that none has appeared on behalf of appellant.

4. Attention of this Court has also been drawn to the Correspondence Dash Board, which appears on the login page of the respondent, to submit that the application no. 3933703, is not mentioned therein.

5. Per contra, learned counsel appearing for the respondent submits that hearing notice was duly served vide E-mail dated 25th September, 2023, and was successfully delivered. However, the appellant did not appear, despite the same.

6. I have heard learned counsel for the parties and have perused the record.

7. At the outset, this Court notes that vide order dated 26th April, 2024, the submission made by the respondent was noted that the appellant had been duly served by an Email, and that the respondent was trying to ascertain the delivery issue through National Information Centre ("NIC"). However, today, learned counsel appearing for the respondent submits that they have not been able to ascertain the delivery status from the NIC.

8. Perusal of the Correspondence Dash Board, as placed on record, shows that the same does not make a mention of the application no. 3933703, which is the subject matter of the present appeal. The said document, is reproduced for ready reference, herein under:

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Correspondence/Notice History

Enter Date

From Date: 25/09/2023 To Date: 25/09/2023 Submit

S.N.	Appl. Ref. No.	Class	Code	Correspondence Subject	Corres. Date	Corres No.	View Notice
1	4877076	5	HRG	Hearing Notice (Show Cause)	25/09/2023	16118013	ViewDetails
2	4877079	5	HRG	Hearing Notice (Show Cause)	25/09/2023	16118008	ViewDetails
3	4858219	5	HRG	Hearing Notice (Show Cause)	25/09/2023	16115623	ViewDetails
4	4637779	9	HRG	Hearing Notice (Show Cause)	25/09/2023	16113908	ViewDetails
5	4879035	7	TAC	Tribunal Accepted Notice for : 4879035	25/09/2023	16113561	ViewDetails
6	4879032	7	TAC	Tribunal Accepted Notice for : 4879032	25/09/2023	16111983	ViewDetails
7	4501441	5	R45	Report Rule 45(2) Opposition	25/09/2023	16110697	ViewDetails
8	5832551		REX	Reply To Examination Report	25/09/2023	16120404	ViewDetails
9	5913999		REX	Reply To Examination Report	25/09/2023	16120409	ViewDetails

9. Reading of the aforesaid, clearly shows that there is no proof that hearing notice qua application no. 3933703, was received by the appellant.

10. This Court also notes the submission made by the appellant in its appeal regarding non-receipt of any hearing notice. The relevant portion of same, reads as under:-

> *"xxx xxx xxx*
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> *9.* ***It is most humbly submitted that, on October 18, 2022, Ld. Registrar of Trade Marks Registry scheduled as hearing for the mark DISPOWAY under application number 3933703 for which no notice under Rule 33 (6) read with Rule 115 of the Trade Marks Rules, 2017 was issued by the Registrar. Resultantly the Appellant's counsel could not attend the hearing scheduled on October 18, 2023, and the impugned order dated November 29, 2023 was passed by the Ld. Sr. Examiner of Trade Marks, Trade Marks Registry wherein the Ld. Sr. Examiner of Trade Marks refused the Application filed by the Appellant for registration of the mark DISPOWAY under section 11 of the Trade Marks Act, 1999. The order was received vide email by the Appellant on November 29, 2023 and it was only on the receipt of the impugned order the Appellant came to know that there existed a letter in the e-records of the Registrar claiming to have sent a notice dated September 25, 2023 to the Appellant for appointment of hearing which was never received by the Appellant's counsel****. Copy of the notice dated September 25, 2023 available in the e-records of the Registrar which was never received by the Appellant's counsel is annexed herewith and marked as* ***Document -I****.*
>
> *xxx xxx xxx"*
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> *(Emphasis Supplied)*

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11. The factual matrix which emerges is that, though, hearing notice dated 25th September, 2023, was purportedly, issued by the respondent, there is no proof on record, to show that the said notice was actually received by the appellant. Consequently, this Court is inclined to allow the present appeal and remand the matter back to the Registrar of Trademarks, for giving an opportunity of hearing to the appellant.

12. Accordingly, the order dated 29th November, 2023, passed by the respondent, is set aside. The trademark application no. 3933703, is restored to its original number.

13. The present matter is remanded back to the Registrar of Trademarks, who shall issue a fresh hearing notice to the appellant, within a period of two weeks from today. The Registrar of Trademarks shall give hearing to the appellant before passing a final order.

14. The Registrar of Trademarks is further directed to rectify its website to show appellant's trademark application no. 3933703, as pending/objected.

15. The Registry is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on E-mail Id: llc-ipo@gov.in for compliance.

16. With the aforesaid directions, the present appeal is disposed of, along with the pending application.

MINI PUSHKARNA, J

AUGUST 16, 2024
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