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

\+ C.A.(COMM.IPD-TM) 16/2024, I.A. 6669/2024 & I.A. 6670/2024

ELEGANCE SERVICES PVT LTD ..... Appellant

Through: Mr. Anshuman Upadhayay, Mr. Naseem, Mr. Rahul Singh & Ms. Apoorva Sharma, Advs.

versus

REGISTRAR OF TRADE MARKS ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Lakshay Gunawat, Mr. Krishnan V., and Mr.Alexander Mathai Paikaday, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% 21.03.2024

1. This appeal has been filed under Section 91 of the Trade Marks Act, 1999 assailing the order dated 20th December, 2023, passed by the Senior Examiner of Trade Marks, Trade Marks Registry, New Delhi, rejecting the application No.4847334 filed by appellant for registration of the mark  in class 9.

2. It is contended by counsel for appellant that a review has been filed against the said rejection *inter alia* on the ground that Form TM-M which was filed for deletion of conflicting goods i.e. LED TV and parts thereof from the applied specifications, but had not been considered by the Examiner, stating that it was not filed within time. It is stated in this regard, that the

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Form TM-M could not be filed in time due to downtime of the system of the Registry during that period.

3. It is also stated by counsel for appellant that the cited mark has been noted as being used since long back, whereas, the status of the cited mark shows that it was on '*proposed to be used basis'* (as applied on 28th November, 2017).

4. It is further claimed that appellant is the registered proprietor of the same mark in class 11, which fact has also not been considered in the impugned order.

5. In the facts and circumstances as noted above, it would be apposite if the review of appellant is considered on its merits and in accordance with law, keeping in mind the submissions of appellant made above.

6. A *de novo* examination may be made by the Examiner. Impugned order is set aside and Examiner may accordingly pass a fresh order. Post the examination, the decision may be communicated by the Examiner within a period of 6 weeks, from the final hearing.

7. It is noted that this Court has not made any observation or assessment of submissions by the appellant's counsel and all these submissions may be considered in review.

8. The appeal stands disposed of with these observations. Pending applications also stand disposed of as infructuous.

9. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 21, 2024/sm/na

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