

Ratan and Co. Vs. P. Narayanan

Ratan and Co. Vs. P. Narayanan

SooperKanoon Citation : sooperkanoon.com/680669

Court : Delhi

Decided On : Apr-22-1975

Reported in : AIR1977Delhi93

Judge : Avadh Behari Rohatgt, J.

Acts : [Trade and Merchandise Marks Act, 1958](#) - Sections 21, 97 and 109(2)

Appeal No. : F.A.O. 28 of 1968

Appellant : Ratan and Co.

Respondent : P. Narayanan

Advocate for Def. : Anoop Singh and ; B.S. Narang, Advs.

Advocate for Pet/Ap. : K.G. Bansal and; R.P. Bansal, Advs

Judgement :

1. These are two appeals against the orders of the Assistant Registrar.
2. The undisputed facts are these. On 5th October, 1966 the appellants Messrs. Rattan & Co. filed an application bearing No. 238044-B to register the trade mark Jainson in class 6 in respect of padlocks. The application was advertised in the Trade Marks Journal on 1st September, 1967.

3. On 30th November 1967 the opponents Messrs. R. P. Locks Co. of Delhi filed an application in Form TM-44 praying for extension of time for one month for giving notice of opposition to the registration of the trademark. This request as signed by their advocate engaged by them.

4. Since the request was not accompanied by a power of attorney of the said advocate no action was taken in the Registry on this request contained in TM-44.

5. On 2nd December, 1967 a letter was addressed by the open- to treat TM-44 as withdrawn.

6. On 11th December, 1967 a notice of opposition signed by the said advocate along with a power of attorney was received in the Registry. The Registry by letter dated 18th December, 1967 informed the advocate that the notice of opposition would not be taken on record as the same was barred by time. Obviously this notice of opposition was filed beyond the period of three months as prescribed in Section 21 of the Trade and Merchandise Marks Act 1958 (the Act).

7. On 23rd December, 1967 the opponents themselves moved a petition supported by an affidavit saying that their application for extension of time may be granted. They further said that the notice of opposition already filed by them may be taken on record and be proceeded with. The opponents informed the Registry that the power of attorney of the advocate engaged by them had been cancelled and that he no longer represents them. The opponents also said that they never authorised their counsel to withdraw TM-44 and, therefore, the request for withdrawal was illegal. The application for withdrawal made by their advocate, it was further alleged, was made without their instructions.

8. On the basis of the Petition made by the opponents the Assistant Registrar granted extension of time by one month. By letter dated 8th January, 1968 he informed them that their request in TM-44 for extension of time has been allowed. The notice of opposition having been filed within the extended time was taken on record.

9. On 5th February, 1968 the appellants filed a review petition in Form TM-57 against the order granting extension of time for filing the notice of opposition. They sought review under Section 97(c) of the Act.

10. The Assistant Registrar by order dated 11th April, 1968 dismissed the application for review on two grounds. Firstly, he held that no review of his order extending the time lay. Secondly, he held that there was no sufficient ground for review of his order.

11. The appellants have filed two appeals in this court. One is directed against the order dated 8th January, 1968 by which the Assistant Registrar acceded to the request for extension of time. Under Section 21 of the Act he had allowed the opponents one month's time by way of extension. This order is challenged in appeal No. 28 of 1968.

12. The other appeal (FAO 86 of 1968) is directed against the order dismissing the application for review. By this order I propose to decide both the appeals. This order will govern them both.

13. Under Section 21 of the Add any person may file an opposition within a period of three months from the date of the advertisement. If he seeks further time he may apply to the Registrar. The Registrar has the power to extend the time for a period, 'not exceeding one month in the aggregate.' The application for extension of time has to be made in the form prescribed in TM-44. This is exactly what happened in this case. A request in TM-44 was made for extension of time. The Assistant Registrar has allowed it. I find nothing wrong with this order.

14. After he had extended the time the appellants made an application for review. The Assistant Registrar by a detailed order went into the whole question. He found that the opponents' advocate had not been authorised to withdraw the application Form TM-44. The opponents filed their affidavit wherein they affirmed that they never gave instructions to their advocate to withdraw TM-44. On the basis of the affidavit and the petition the Assistant Registrar came to the conclusion that their advocate had acted contrary to the instructions of the opponents in withdrawing TM-44. He also recorded the finding that the act of the advocate was not bona fide

since it was not in the best interests of the client.

15. The opponents wanted to pursue the matter of opposition. They wanted extension of time. They filed the notice of opposition within the extended time. They wanted it to be taken on record since they wanted to oppose the registration of the appellants' trademark. Since the opponents were interested in opposing the registration the Assistant Registrar found that the advocate had no power to act contrary to their instructions.

16. Mr. Anoop Singh on behalf of the opponents in both the appeals has raised two preliminary objections. As regards Fao 28 of 1968 he submits that the appeal is incompetent. Mr. K. G. Bansal on behalf of the appellants contends that an appeal lies to this Court 'from -any order or decision of the Registrar under this Act' under Section 109(2) of the Act. The question is: Is it an order under the Act? Is the order of the Assistant Registrar appealable? Does an appeal lie from every order of the Registrar? Similar provisions are to be found in other statutes. See the Indian companies Act, 1913(Section 202) and the decision of the Supreme Court in Shanker Lal Aggarwal V. Shanker Lal Poddar, : [1964]1SCR717 The Delhi Rent Control Act, 1958 (Section 38(1)) and the decision of the Supreme Court in Central Bank of India Ltd. v. Gokal Chand, : [1967]1SCR310 .

17. The Supreme Court in Central Bank case has held that and order under the Act' means that it is an order which affects the rim guts and liabilities of the parties. A mere procedural order is not within the contemplation of the Act and is not comprehended by the words 'under the Act. ' The court has to pass a number of orders, mainly Procedural in character, during the progress of a litigation. Their object is to assist the parties in the prosecution of their case in a pond Such orders are not made to decide the rights and liabilities of the parties. They merely regulate the procedure. A good lustration of such an order is where an adjournment is granted or an adjournment is refused. Or time is extended or the request is declined. Take another example. In a pending proceeding the Registrar refuses to take additional evidence though he is empowered to do so under Rule 56 of the Trade and Merchandise Rules. (See: S. C. Sharma & Co. V. Sukh Dayal, 1966 Del Lt 273 Obviously such orders are not appealable. This is what happened

in this case. The Assistant Registrar granted extension of time, which he was clearly empowered to do under Section 21 of the Act.

18. To my mind the object of Section 109(2) of the Act is to give a right of appeal to a party aggrieved by some order, which affects his right or liability. The words 'from any order or decision of the Registrar under this Act' though very wide do not include interlocutory orders, which are merely procedural or processional and do not affect the rights and liabilities of the parties. The Legislature could not have intended that the parties should be harassed with endless expense and delay by appeals from such procedural orders. It is open to a party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding.

19. I, therefore, hold that the order granting extension of time is not appealable under Section 109(2) of the Act. I would uphold the preliminary objection.

20. In the second appeal (FAO 86 of 1968) Mr. Anoop Singh has raised another objection. He says that this appeal is also incompetent for two reasons. Firstly that no appeal lies under Section 109(2) of the Act. Secondly that no review application lay to the Assistant Registrar.

21. A party is entitled to make an application for review under Section 97(c) of the Act. That provision says:

'The Registrar may, on an application in the prescribed manner, review his own decision.'

22. When the Assistant Registrar extended the time he was not making a decision in the sense in which that word is used in Section 97(c). He was merely extending the time by one month under Section 21(1). It can hardly be called a decision. It does not affect the rights and liabilities of the parties.

23. A decision means a concluded opinion. It is an authoritative answer to the question raised before a court. It is the settlement of a controversy submitted to it. Decision implies the exercise of a judicial determination as the final and definite result of examining a question. An order granting extension of time is not of such a

nature. It is not, such a decision as to give the age- person a right to appeal. It is just a procedural order in aid of proceedings.

24. thereforee, the Assistant Registrar was right in holding that the review petition to him was incompetent. This is my view also. If this is so an appeal against the order refusing review will not be competent.

25. With regard to notice of opposition to registration the provisions of Section 21 of the Act are specific. The general provisions contained in Section 101 will not be applicable on the principle: the special excludes the general. Section 101 applies when time is not expressly provided in the Act. Here time is expressly provided by Section 21.

26. The question of extension of time depends on the satisfaction of the Registrar. If he finds sufficient cause he extends time. The matter is not of such great moment that an appeal or review should be provided against extension of time. An indication of the legislative mind is afforded by Section 101(2), which says:

'Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.'

27. This is, thereforee, certain that the legislature does not require the Registrar to hear the parties on the matter of granting extension of time. Nor has it provided an appeal against orders made under sub-section (1) of Section 101.

28. I would apply this reasoning to a review, which is sought against an order of the Registrar granting extension of time. The legislative policy is not to provide an appeal against such an order both under Section 109(2) and See. 101(2). Nor will a review lie under Section 97(c).

29. I have examined tire case on merits The Assistant Registrar has dealt with the whole matter at length in his order date 11th April,1968. I think he was right in extending the time and in taking the notice of opposition on record. He was also right I think in dismissing the review application.

30. For these reasons I dismiss both appeals with costs. The appellants will pay Rs. 200/- as costs in both the appeals.

31. The record be sent back to the Trade Mark Registry, Okhla immediately.

32. Appeals dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com