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

% **Date of Decision: 07th January, 2025**

+ W.P.(C)-IPD 27/2024 & CM 87/2024

MALPANI ENTERPRISES

.....Petitioner

Through: Mr. Hemant Daswani with
Ms. Saumya Bajpai and Ms. Pranjal,
Advocates.
(M): 9871824303

versus

REGISTRAR OF TRADE MARKS

.....Respondent

Through: Mr. Sumit Nagpal, Advocate.
(M): 9911995000
Email: mail@sumitnagpal.in

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

1. The present writ petition has been filed with a prayer to quash the letter dated 20th August, 2024 under reference no. AD-2869 issued by the respondent. There is a prayer for direction to the respondent to take on record the notice of opposition filed by the petitioner and for proceeding with the opposition application, as per the Rules.

2. Petitioner is registered owner of the trademark 'DECOR PLY' under no. 2071369 and dealing in goods, i.e., ply wood, flush doors and building material, included in Class 19 for sale in India and for export. Petitioner has been using the said mark extensively, continuously and uninterruptedly since the year 2010.



3. It is the case of the petitioner that it came across the mark under application no. 5587879 for the mark ‘R3 DÉCOR’, which is visually, structurally and phonetically similar to the petitioner’s registered trade mark ‘DECOR PLY’, which was filed before the respondent’s New Delhi Office.

4. The Registrar of Trade Marks had accepted the trademark and published the application in Trade Mark Journal No. 2152 dated 15th April, 2024. As per the Trade Mark Rules, 2017, the last date for filing notice of opposition with respect to the subject trademark was 15th August, 2024. On account of 15th August, 2024 being a national holiday, the last date was automatically extended to 16th August, 2024.

5. The last date being extended to 16th August, 2024 is reflected from the letter no. AD-2869 dated 20th August, 2024 issued by the respondent/ Registrar of Trademarks, which has been impugned in the present proceedings.

6. As per the case canvassed on behalf of the petitioner, the petitioner attempted to oppose the subject trademark on 16th August, 2024 through online portal of the respondent. However, the petitioner could not file the notice of opposition, as the online portal of the respondent stated that “*the last date of filing the notice of opposition has lapsed*”. It is submitted that in view of the technical glitch in the online portal of the respondent, the petitioner was constrained to file the notice of opposition through physical mode and therefore, the petitioner prepared the necessary bank draft of ₹3000/- in the name of the respondent under demand draft no. 007701 dated 16th August, 2024 drawn on HDFC Bank Limited.

7. It is the case of the petitioner that pursuant thereto, the notice of opposition was sent to the Registrar of Trademark via Speed Post, which



was received by the respondent on 19th August, 2024. However, *vide* the impugned letter dated 20th August, 2024, the respondent has written to the petitioner that the last date of filing the notice of opposition to the subject application was 16th August, 2024. Since the Speed Post was received by the respondent on 19th August, 2024, the same is time barred.

8. Notice in the present petition was issued on 02nd September, 2024. No reply to the present petition has been filed.

9. However, learned counsel appearing for the respondent submits that he has instructions to oppose the present petition. Thus, with the consent of the parties, the matter is taken up for final disposal.

10. It is submitted by learned counsel appearing for the respondent that the documents sent by the petitioner, were not received on or before the last date on which the opposition could be filed. Therefore, the notice of opposition, as filed by the petitioner, has rightly not been accepted. He relies upon Rule 14 of the Trade Mark Rules, 2017, to submit that any application or document so sent shall be deemed to have been made, served, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post. Thus, he submits that since in the present case, the documents filed by the petitioner were received only on 19th August, 2024, the same were beyond the statutory period.

11. On pointed query by this Court as regards the technical glitch in the online portal of the respondent, the same is not denied by the respondent. Rather, learned counsel appearing for the respondent has tried to justify the action of the respondent by submitting that the last date for filing through online portal was 15th August, 2024, though, the last date of filing through physical mode, was 16th August, 2024. He further submits that the software



in the Trade Marks Registry, automatically calculates the date.

12. Having heard learned counsels for the parties, at the outset, this Court notes that the respondent itself has admitted that the last date of filing the notice of opposition was 16th August, 2024. If that be the case, if a party on account of a technical glitch is unable to file the requisite opposition and documents within the statutory period, the same cannot operate against the said party.

13. In case, the online portal of the respondent showed wrongly that the last date of filing the notice of opposition had lapsed, despite the fact that the statutory period had still not lapsed, then, a party cannot be allowed to suffer and their statutory right cannot be allowed to lapse on that account.

14. This Court takes note of the fact that the petitioner had sought to file the notice of opposition through online portal within the statutory period. However, on account of the technical glitch, the petitioner was precluded from doing so. Therefore, in that eventuality, when the petitioner was constrained to file the notice of opposition through physical mode, the benefit of the delay in receiving the said notice of opposition and documents, has to be given to the petitioner.

15. Accordingly, considering the facts and circumstances of the present case, it is directed that the Notice of Opposition filed by the petitioner, shall be taken on record by the respondent.

16. Consequently, the impugned letter dated 20th August, 2024 issued by the respondent, is set aside.

17. The respondent shall proceed with the Notice of Opposition filed by the petitioner, in accordance with law.



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18. With the aforesaid directions, the present petition is disposed of, along with pending application.

MINI PUSHKARNA, J

JANUARY 7, 2025/c