



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 11453/2023

Jitendra Goyal, Trading As M/s. Anshul Products, 377,
Kavandheshpura, Ajmer-305001 (Rajasthan)

-----Petitioner

Versus

Registrar of Trade Marks, Trade Marks Registry, Near
Chankyapuri Overbridge, Ghatlodia, Ahmedabad-380061

-----Respondent



For Petitioner(s) : Mr. G.D. Bansal with
Mr. Dharmendra Kumar Gupta
Mr. K.K. Pancholi
For Respondent(s) : Mr. Mohit Balwada

JUSTICE ANOOP KUMAR DHAND

Order

01/07/2025

1. The instant writ petition has been filed by the petitioner with the following prayer:-

“Issue a writ or mandamus or any other suitable writ, order or direction in nature of mandamus directing the respondent to grant registration and /or renewal of petitioners Trade Mark Register No. 857965 dated 25.05.1999;
(ii) Award costs of this petition to the petitioner.
(iii) Issue any other writ, order or direction which this Hon’ble Court may deem just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.”

2. Learned counsel for the petitioner submits that the respondent allotted a Trade Mark “Lala Ji Diamond Agarbatti” to the petitioner, on an application submitted by him on 25.05.1999 and the aforesaid Trade Mark was valid upto 25.05.2009. Counsel



for the petitioner submits that the Trade Mark of the petitioner has been removed by the respondent, without making compliance of the provisions contained under Section 25(3) of the Trademarks Act, 1999 (for short, 'the Act of 2009') and the Rule 58 of the Trade Mark Rules, 2017 (for short, 'the Rules of 2007'). Counsel submits that though, after expiry of the aforesaid period, no application was submitted by the petitioner seeking renewal of the aforesaid Trade Mark but the respondents were under legal obligation to make compliance of the mandatory provisions before removing the Trade Mark from the official record, hence, under these circumstances, interference of this Court is warranted.

3. Per contra, counsel for the respondent opposed the prayer made by counsel for the petitioner and submitted that no valid document has been placed on record by the petitioner in support of his contentions as the documents annexed with the writ petition are not valid for any legal purpose. Counsel submits that even otherwise also the Trade Mark of the petitioner had expired way back in the month of May, 2009 and no application for renewal was submitted by the petitioner for more than a period of seven years, hence, under these circumstances, the respondents have removed the Trade Mark of the petitioner from their official record, and under these circumstances, interference of this Court is not warranted and the instant petition is liable to be rejected.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. Perusal of the record indicates that the petitioner submitted an application before the respondents for registration of his Trade Mark "Lala Ji Diamond Agarbati" by way of filing an application on





25.05.1999 and the said application was allowed and the petitioner was granted the aforesaid Trade Mark and the same was valid till 25.05.2009. This fact is not in dispute that after expiry of the aforesaid period, no application for renewal was submitted by the petitioner. This fact is also not in dispute that before removing the trademark from the official record, the respondents have failed to comply with the mandatory provision contained under Section 25(3) of the Act of 1999.

6. For ready reference provision contained under Section 25(3) of the Act of 1999 and Rule 58 of the Rules of 2017 are quoted as under:-

“25. Duration, renewal, removal and restoration of registration.—

(1) xxxxx

(2) xxxxx

(3) At the prescribed time before the expiration of the last registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register:

Provided that the Registrar shall not remove the trade mark from the register if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the trade mark and shall renew the registration of the trade mark for a period of ten years under sub-section (2).”

**58. Notice before removal of trademark from register.**

(1) In case no application for renewal of the registration in the prescribed form together with the specified fee has been received, the Registrar shall send, not more than six months before the expiration of registration of the trademark, a notice in Form RG-3 at the address of service informing the registered proprietor of the approaching date of expiration and the conditions, if any, subject to which the renewal of the registration may be obtained.

(2) Where, in the case of a trademark the registration of which (by reference to the date of application for registration) becomes due for renewal, the trademark is registered at any time within six months before the date on which renewal is due, the registration may be renewed by the payment of the renewal fee within six months after the actual date of registration and where the renewal fee is not paid within that period, the Registrar shall subject to rule 60, remove the trademark from the register.

(3) Where, in the case of a trademark the registration of which (by reference to the date of application for registration) becomes due for renewal, the trademark is registered after the date of renewal, the registration may be renewed by the payment of the renewal fee within six months of the actual date of registration and where the renewal fee is not paid within that period the Registrar shall, subject to rule 60, remove the trademark from the register.

(4) The renewal of registration of a collective trademark or a certification trademark shall be in Form TM-R along with the prescribed fee as specified in the First Schedule."

7. A bare perusal of the aforesaid provision provides that it was mandatory for the respondents to comply with the same before removing the Trade Mark from their register. The authorities were supposed to comply with the aforesaid provisions



and issue a notice in the Form O-3/ RG-3 informing the registered proprietor of the date of expiry but in the instant case, the aforesaid exercise has not been undertaken by the respondents. Since the respondents have failed to comply with the aforesaid mandatory provision, their action of removal of registered trademark of the petitioner from the record is not sustainable in the eyes of law and such action is liable to be and is hereby quashed and set aside.

8. The present writ petition is accordingly allowed.

9. The respondents would be at liberty to pass appropriate fresh order, after making due compliance of the provisions, contained under Section 25(3) of the Act of 1999 and Rules 58 of the Rules of 2017.

10. Needless to observe that the respondents would pass fresh order, after making compliance of the aforesaid provisions, strictly in accordance with law and after providing due opportunity of hearing to the petitioner.

11. In case, the petitioner submits an application for renewal of Trade Mark before the respondents, the respondents would decide the same strictly in accordance with law.

(ANOOP KUMAR DHAND),J

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