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

\+ C.A.(COMM.IPD-TM) 69/2022

M/S MEX SWITCHGEARS PVT. LTD. 9TH KILOMETER, MEX ESTATE, PATHANKOT ROAD, JALANDHAR

..... Appellant

Through: Ms. Zeba Tarannum Khan and Ms. Sheril Bhatia, Advs.

versus

VIKRAM SURI TRADING AS M/S ARMEX AUTO INDUSTRIES

..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday, Mr. M Sriram and Mr. Krishnan V, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

% 13.10.2023

1. This is an appeal against the order dated 24 May 2018, passed by the Deputy Registrar of Trade Marks apropos Opposition No. 851850 filed by the appellant to Application no. 1985391 of Respondent 1 seeking registration of the mark "ARMEX".

2. The impugned order reads thus:

"ORDER

Proceedings were initiated under Section 21 of the Trade Mark Act, 1999, by the above named opponent to oppose the registration of trade mark applied for by the above named applicant and whereas the Counter Statement was filed by the applicant and the same was served to the opponent vide 2327514 dated 22/11/2017

> and whereas within the time prescribed under the rules, neither any evidence in support of opposition was filed nor any statement was submitted on behalf of the opponent to the effect that the opponent does not desire to adduce evidence but wants to rely on the facts mentioned in the Notice of Opposition the abovementioned opposition is therefore deemed to have been abandoned under Rule 45(2) of the Trade Marks Rules 2017.
>
> IT IS HEREBY FURTHER ORDERED that there shall be no order as to cost of these proceedings.

3. On 18 September 2023, the learned Joint Registrar in this Court closed the right of Respondent 1 to file reply to this petition, noting the fact that Respondent 1 had been served but had not filed any reply till then. I may also note that Respondent 1 has been continuously absent in these proceedings ever since notice was issued in the appeal. Respondent 1 continues to remain unrepresented.

4. As such, I have heard Ms. Zeba Tarannum Khan, learned Counsel for the appellant and Mr. Harish Vaidyanathan Shankar, learned CGSC for Respondent 2.

5. The issue is mercifully brief and so, likewise, will this order be.

6. It is not in dispute that the copy of the counter statement to the notice of opposition was dispatched on the opponent by the Trade Mark Registry on 22 November 2017 only by e-mail. The submission of Ms. Zeba Tarannum Khan is that e-mail is not one of the modes of services envisaged by Section 143[1] of the Trade Marks Act, 1999 and

[1] **143. Address for service**. – An address for service stated in an application or notice of opposition shall for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as

that, therefore, it cannot be said that appellant was appropriately served in the manner known to law.

7. Section 143 of the Trade Marks Act states that an address for service, stated in an application or notice of opposition shall, for the purposes of the said application or notice of opposition, be deemed to be the address of the applicant or the opponent, and permits service of all documents in relation to the application or the notice of opposition by leaving the documents at, or sending them by post to, the said address as provided in the application or notice of opposition.

8. *In the event that an e-mail ID is provided by an applicant or an opponent in the notice of opposition*, I do not think that there can be any manner of doubt that service of documents relating to the application or the notice of opposition at the said e-mail ID would suffice as service within the meaning of Section 143 of the Trade Marks Act. This is because, by providing his e-mail ID in the application or notice of opposition, the applicant or opponent clearly agrees to communications be addressed to him at the said e-mail ID. A message is clearly conveyed to the Registrar that service could be effected even at the said e-mail ID. The words "leaving them at" as employed in Section 143, in my view, have to be read expansively enough to cover service by e-mail where the applicant or the opponent provides an e-mail ID in the application or notice of opposition. In other words, if the applicant or the opponent provides an e-mail ID in the application or notice of opposition, it would not be open to the

the case may be.

applicant/opponent to then argue that, though the documents relating to the application or the notice of opposition were sent by e-mail to the said e-mail ID, there has, nonetheless, been no service within the meaning of Section 143 of the Trade Marks Act.

9. In the present case, however, it is not in dispute that no e-mail ID was provided by the appellant in its notice of opposition. As such, it cannot be said that the e-mail ID at which the documents were sent by the Registry constitutes an "address for service" within the meaning of Section 143 of the Trade Marks Act. The Registry of Trade Marks is at liberty to effect service of documents by e-mail only where the party being served has provided an e-mail ID in the application or notice of opposition. Where no such e-mail ID is provided, sending of the documents by e-mail, even if it is in fact sent to the e-mail ID of the party concerned, would not constitute service of documents within the meaning of Section 143 of the Trade Marks Act.

10. The reason is that it is entirely up to the applicant, or the opponent, to choose the address at which he desires official communications, from the Registry of Trade Marks, to be addressed to him. There is no statutorily or legal compulsion on the applicant, or opponent, to provide an email ID for service. There may be several reasons why the applicant, or opponent, does not desire to be served by email. The email may be difficult to access, or may not be regularly accessed by the party concerned. If the rules were to require any email ID to be provided by the party, then, no doubt, the party

would be mandatorily required to do so. Where the rule does not so require, however, their decision as to the address at which he desires to be served vests with the party concerned. In view of the express wordings of Section 143 of the Trade Marks Act, the Registry would be duty-bound to effect service only at such address, and effecting service or any other address would not be service at all.

11. As, in the present case, the petitioner did not provide any email ID for communication in its notice of opposition, and it is not disputed that the counter statement was dispatched to the petitioner only by email, the petitioner cannot be said to have been properly served with the counter statement, as envisaged by Section 143 of the Trade Marks Act.

12. As such, the impugned order, which treats the plaintiff's opposition as abandoned because no evidence in support of the opposition, or statement to the effect that the opponent was relying on the assertions contained in the notice of opposition, was filed within the stipulated time from the date of service of the documents by e-mail, cannot sustain.

13. The impugned order is, therefore, set aside.

14. However, as now the documents are admittedly received by the appellant, the appellant is directed to comply with the statutory requirements consequent on receipt of the documents, within the time stipulated in that regard, reckoned from today.

15. Failure to comply with the statutory requirements within the time specified in the Trade Marks Act or the Trade Marks Rules would entail statutory consequences.

16. This appeal stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OCTOBER 13, 2023
dsn

Click here to check corrigendum, if any