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

+ W.P.(C)-IPD 50/2021 & CM APPL. 7338/2021

VINOD KUMAR Petitioner

Through: Mr. Prince Arora, Adv.

versus

INTELLECTUAL PROPERTY APPELLATE BOARD AND

ORS Respondents

Through: Mr. Siddharth Bambha and Ms.
Sucharu Garg, Advs for R 3

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(O R A L)

12.12.2022

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1. This writ petition, under Article 226 of the Constitution of India, assails order dated 30th December 2020 passed by the learned Intellectual Property Appellate Board (the learned IPAB) in Rectification Petitions ORA/108/2020/TM/DEL and ORA/117/2020/TM/DEL (*FK Bearing Group Co. Ltd. v. Vinod Kumar & Anr.*) The petitioner was Respondent 1 before the learned IPAB and Respondent 2 herein was the appellant. The rectification petitions were, therefore, instituted by Respondent 2 against the petitioner.

2. The impugned order allows the rectifications petitions filed by Respondent 2 on merits.

3. Before the learned IPAB, the petitioner had sought an adjournment. The adjournment was rejected by the learned IPAB. Para 3 CS(COMM) 310/2020

of the impugned order dated 30th December 2020, which deals with the said request, reads thus:

“There is no representation on behalf of the Respondent No.1 at this and on the last few hearings and the matter today came up for final hearing of the on 29th December 2020; there was an adjournment petition filed by the Respondent No.1 and one counsel Mr. Abhilash Gupta (Enrollment No.D/3897/2019) on behalf of Suwarn Rajan Chauhan (Enrollment No.D/667/2000) & Akshay Srivastava (Enrollment No.D/1967/2008) represented and informed the counsel's office is closed due to covid-19 and the employees are isolated to their residences and the main arguing counsel is also directed to be in self-quarantine till 01-01-2021; the Respondent in adjournment petition/Rectification Applicant filed its counter and annexed the Facebook page of the Mr. Akshay Srivastava who is lead counsel in the matter. In the said Facebook page of Mr. Akshay Srivastava the status is updated has been travelling for a holiday since 24.12.2020 to Tirupati, Rameswaram, Maduria and the last activity shown on his Facebook account is that he was at Marina Beach, Chennai on 27.12.2020 screen shots of his Facebook profile clearly exhibited the same. In light of the same it is falsely represented before this Board that the main counsel is in quarantine while it has been shown to us through the Facebook postings that the said Counsel is on a holiday, we have no reason not to believe the said representation by the Respondent/Rectification Applicant pointing out through the Facebook printouts. It is a matter of regret that such irresponsible false representations are made before this Board. This sought of misrepresentations are unwarranted and does not go well with the bar and bench, we may be constrained to report this sought of reckless submissions to the Bar Council. Since a deliberate wrong irresponsible representation has been before us with an intent to secure an adjournment in the matter the said Adjournment application is being dismissed with costs of Rs.5,000/- . The same may be deposited with PM Cares fund at the earliest not before 07th January 2021 and the deposit slip be filed with this Board failing which we shall report to Bar Council of India to take appropriate action against the said counsels Suwarn Rajan Chauhan (Enrollment No.D/667/2000) & Akshay Srivastava (Enrollment No.D/1967/2008).”

4. The learned IPAB proceeded to pass directions against learned Counsel for having, as it thought, made false averments before it with respect to availability of learned Counsel. It has also awarded costs and has referred the matter to the Bar Council of India in the event of failure

to pay the costs imposed.

5. In the present petition, this Court, *vide* order dated 23rd February 2021, directed the learned Counsel who had been appearing in the matter before the learned IPAB to file individual affidavits, explaining their failure to be present before the learned IPAB on 30th December 2020.

6. Three learned Counsel were appearing on behalf of Respondent 1 before the learned IPAB, namely Abhilash Gupta, Akshay Srivastava and Suwarn Rajan Chauhan. As is apparent from para 3 of the impugned order, the learned IPAB proceeded on the premise that Akshay Srivastava was the lead Counsel. Save and except a statement to the said effect having been made by learned Counsel for Respondent 2, there appears to be no justification for the learned IPAB's presumption that Akshay Srivastava was the lead Counsel in the matter.

7. Before this Court, it has been submitted that the arguing Counsel before the learned IPAB was Suwarn Rajan Chauhan who was indeed under quarantine and expired on 30th April 2021.

8. This Court has also seen some of the earlier orders passed by the learned IPAB in the said proceedings in which it does appear that Suwarn Rajan Chauhan was principally appearing on behalf of the petitioner.

9. In that view of the matter, this Court is unable to sustain the impugned order, insofar as it refused to adjourn the matter on the premise that Akshay Srivastava was the lead Counsel and that he was at Chennai on the date when the matter was taken up.

10. Even otherwise, in my considered opinion, before taking an adverse view against the Counsel on the basis of a Facebook post, and referring the matter to the Bar Council of India, the learned IPAB ought, at the very least, to have given an opportunity to the Counsel to explain the circumstances. Postings on Facebook cannot be treated as determinative of the location of a person at a particular point of time, at least by a Court. Even if a Court is to take an adverse view in that regard, the Counsel ought to be given an opportunity to explain the position before such a view is taken. This Court is of the concerned opinion that the learned IPAB was needlessly strict in imposing costs and referring the matter to the Bar Council of India in such circumstances.

11. In view of the fact that Suwarn Rajan Chauhan was indeed quarantined at the relevant time and expired, unfortunately, thereafter, this Court is not entering into any of the other aspects of the matter regarding non-absence of Counsel on behalf of the petitioner on 30th December 2020.

12. So far as the earlier adjournments taken by the petitioner, if any, are concerned, the matter stands covered by the following passage from the judgment of the Supreme Court in *State Bank of India v. Chandra Govind Ji*¹:

“7. In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not

¹ (2000) 8 SCC 532
CS(COMM) 310/2020

be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter.”

13. In view of the aforesaid discussion, the impugned order dated 30th December 2020 is quashed and set aside. The rectification petitions filed by Respondent 2 shall stand restored for re-hearing.

14. Inasmuch as the learned IPAB has subsequently been abolished, the rectification petitions would have to be heard by this Court. The Registry is directed to register the rectification petitions under the appropriate nomenclature and list them before the Court on 23rd February 2023 for hearing and disposal. Let the record from the learned IPAB be also requisitioned prior to the said date.

15. For the purpose of registration, the Respondent 2 is directed to place on record a photocopy of the entire record along with an appropriate affidavit under Section 65-B of the Evidence Act, 1872. Respondent 2 undertakes to provide the registry with the entire record of the rectification petitions filed before the learned IPAB within a period of four weeks. On the said record being provided the rectification petitions would be numbered and registered before this Court and listed before the Court for disposal on 23rd February 2023.

16. Mr. Siddharth Bamba learned Counsel for Respondent 2 points out that, Respondent 2 was enjoying interim relief *vide* order dated 10th July

2020 passed by the learned IPAB which was in force till the passing of the impugned order dated 30th December 2020.

17. As the impugned order, which is in favour of Respondent 2, has been quashed only on the ground of violation of the principles of natural justice, Respondent 2 would be entitled to be restored to the position in which it was at the time of its passing.

18. As such, the order dated 10th July 2020 passed by the learned IPAB shall stand restored and remain in operation till this Court decides the two rectification petitions.

19. List the rectification petitions, duly registered, for hearing and disposal on 23rd February 2023.

20. This writ petition stands allowed accordingly. No costs.

DECEMBER 12, 2022/AR **C.HARI SHANKAR, J**