



2026:DHC:1831



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

% Judgment delivered on: 28/02/2026

+ **C.A.(COMM.IPD-TM) 45/2025 & IA Nos.19415/2025 & 26937/2025**

**INTERNATIONAL BUSINESS MACHINES
CORPORATION**

.....Appellant

Versus

TIVOLI GARDENS & ANR.

.....Respondents

Advocates who appeared in this case

For the Appellant : Mr. Peeyoosh Kalra, Mr. C.A. Brijesh &
Ms. Simranjot Kaur, Advocates.

For the Respondents : Mr. Rishi Bansal & Mr. Indraneil
Choudhary, Advocates for R-1.
Ms. Nidhi Raman, Mr. Om Ram & Mr.
Arnav Mittal, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Appeal has been filed under Section 91 of the Trade Marks Act, 1999 (“Act”) assailing the order dated 23.04.2025 (“**Impugned Order**”) passed by the learned Assistant Registrar of Trade Marks, New Delhi.



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FACTUAL BACKGROUND:

2. The Appellant is a cloud platform and cognitive solutions company operating in over 170 countries. It is claimed in the present Appeal that the Mark 'TIVOLI' ("**Subject Mark**") is one of the most recognized names in enterprise systems and IT infrastructure management. It is further claimed that the Subject Mark traces its origin to Tivoli Systems Inc. In 1996, Tivoli Systems Inc. was acquired and merged with the Appellant, making Appellant the owner of the Subject Mark.

3. It is claimed by the Appellant that the Appellant's 'TIVOLI' suite represents a comprehensive collection of software products designed to provide an integrated management framework for enterprises with extensive IT infrastructure. It is further claimed that over the past three decades, the Appellant has continuously and extensively used the Subject Mark worldwide and the same has acquired distinctiveness and has become exclusively associated with the Appellant.

4. On 15.09.2003, the Appellant filed an application bearing No. 1236500 for the registration of the Subject Mark in Class 42 in respect of '*Computer programming services, design of computer systems and software, research and consulting services, in the field of automation, computer programing, data input and organization, and computer system methodology, development and selection*'. The said application was advertised in the Trade Marks Journal No. 1338-1 dated 15.01.2006.

5. Subsequently, Respondent No. 1 filed Notice of Opposition dated 29.08.2006 objecting to the aforesaid application filed for the registration of the Subject Mark. Respondent No. 1 is engaged in the business of providing hospitality and food for human consumption, and its Notice of Opposition



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was based on its Marks ‘TIVOLI’ and ‘TIVOLI GARDENS’, which are allegedly in use since the year 1994.

6. On 04.10.2011, the Appellant filed its Counter Statement and thereafter, on 05.05.2016, the Appellant filed a request with Respondent No. 2 for taking the said Counter Statement on record and serving the same on Respondent No. 1. It is claimed in the Appeal that the Counter Statement was served on Respondent No. 1 on 08.07.2019 by Respondent No. 2, along with a notice requiring Respondent No. 1 to file evidence in support of the Opposition filed by Respondent No. 1.

7. Under cover of letter dated 22.10.2019, the Appellant filed a request with the Registrar of Trade Marks to dismiss the Opposition filed by Respondent No. 1 under Rule 45(2) of the Trade Marks Rules, 2017 (“**2017 Rules**”) as Respondent No. 1 had not filed its evidence in support of the Opposition or any reliance letter, within the prescribed time under Rule 45 of the 2017 Rules.

8. Thereafter, on 05.01.2022, a hearing notice was issued affording Respondent No. 1 the opportunity to show cause as to why the Opposition shall not be deemed abandoned under Rule 45(2) of the 2017 Rules, for the failure to submit evidence in the support of the said Opposition within the prescribed time. A hearing was fixed in the matter for 24.01.2022.

9. Respondent No. 1 under cover of letter dated 18.01.2022 filed a request seeking adjournment of the hearing fixed on 24.01.2022 on the ground that the Counsel for Respondent No. 1 had recently been engaged and did not possess the relevant information and documents. Accordingly, the hearing was fixed for 15.03.2022.



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10. Respondent No. 1 under cover of letter dated 09.03.2022 stated that reliance upon their submissions made in the Notice of Opposition as interim evidence under Rule 45 of the 2017 Rules and on the same day, filed an Interlocutory Petition seeking condonation of delay in compliance with the said Rule.

11. After some delay, the hearing finally took place on 06.03.2025, and *vide* Impugned Order, Respondent No. 2 allowed Respondent No. 1's Interlocutory Petition and placed the evidence in support of its Opposition on record.

12. Aggrieved by the Impugned Order, the present Appeal has been filed by the Appellant.

PROCEDURAL BACKGROUND

13. *Vide* order dated 11.08.2025, Notice was issued in the present Appeal, which was accepted by learned Counsel appearing for Respondent No. 1 and 2. It was further directed that Respondent No. 2 shall file an Affidavit within a week, providing the proof of service of Notice dated 08.07.2019, sent to Respondent No. 1.

14. *Vide* order dated 26.08.2025, it was recorded that no appearance was mentioned on behalf of Respondent No. 2 in the previous order dated 11.08.2025. Accordingly, fresh Notice was issued to Respondent No. 2, which was accepted by the learned CGSC. Respondent No. 2 was directed to file an Affidavit providing proof and manner of service as well as proof of receipt of the Notice dated 08.07.2019, sent to Respondent No. 1 and its agent 'India Trade Marks Co.' in these proceedings, within a period of two weeks.



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15. *Vide* order dated 24.09.2025, it was recorded that a short Affidavit dated 23.09.2025 has been filed on behalf of Respondent No. 2, the relevant extract of which states as under:

“4. It is submitted that the notice of Counter-Statement issued by the Trade Marks Registry bears the internal dispatch number “4220361”, which is clearly reflected on the notice generated through computer system on 08.07.2019 and processed by the opposition section of Trademark Registry on “03.08.2019” and the same was dispatched on 07.8.2019 through India Post by the Trademark Registry and thereby, served upon the Respondent No.1. The presence of this dispatch number evidences that the Registry duly processed and recorded the dispatch of the Counter-Statement in the ordinary course of business.”

16. It was also observed *vide* order dated 24.09.2025 that the said Affidavit does not clarify whether the Notice with Dispatch No. 4220361 has been sent to Respondent No. 1 or to ‘Indian Trade Marks Co.’, which was the agent of Respondent No. 1. It was further observed that from the said Affidavit it was not clear whether the said Dispatch No. pertains to the Trade Mark Agent of the Appellant or the Trade Mark Agent of Respondent No. 1

17. It was recorded *vide* order dated 19.11.2025 that pursuant to the order dated 24.09.2025, Respondent No. 2 produced the extracts of the Dispatch Register along with the Excel sheets showing the dispatch of the Notice dated 08.07.2019 *vide* Dispatch No. 4220361. Thereafter, the Parties were heard at length and the Order was reserved in the present Appeal *vide* order dated 17.12.2025.



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SUBMISSIONS ON BEHALF OF THE APPELLANT:

18. The learned Counsel for the Appellant advanced the following submissions:

- 18.1. The Counter Statement was served on Respondent No. 1 by Respondent No. 2 along with a notice dated 08.07.2019 requiring Respondent No. 1 to file evidence in support of the opposition filed by it, under Rule 45. In the said notice it was explicitly mentioned that if no evidence in support of the opposition is left at the Registry, or if no intimation that the opponents do not desire to adduce any evidence is sent to the Registry, and to the Appellants, within two months, the opposition will be deemed to have been abandoned *vide* Rule 45(2).
- 18.2. Respondent No. 1 was duly served as per the Registry's online records. Respondent No. 1 did not allege that its erstwhile Counsel did not receive the Counter Statement before the Trade Marks Registry. It is only at the appellate stage that Respondent No. 1 has sought to introduce a contrary plea, seeking to suggest non-service of the Counter Statement, which is clearly an afterthought, and is contrary to the record. Respondent No. 1 cannot be permitted to approbate and reprobate in this manner, as no such allegation was raised before the Registrar.
- 18.3. The Counter Statement's service has been reflected in the online records of the Trade Marks Registry for several years. Respondent No. 1's entire case is based upon non-communication between Respondent No. 1 and its Counsel. It is



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clear that non-receipt of Counter Statement by Counsel has not been averred by Respondent No. 1.

- 18.4. The Appellant received Respondent No. 2's said notice on 10.08.2019. The notice along with receipt stamp has been filed on 19.08.2025 *vide* diary no. 5894138/2025. It defies logic that Respondent No. 2 would have affected service upon the Appellant but not upon Respondent No. 1, who was required to file its evidence. Therefore, the plea of non-service now taken by Respondent No. 1 is implausible.
- 18.5. Further, Respondent No. 2's notice of service of Counter Statement is dated 08.07.2019, which clearly establishes that the said Counter Statement had already been communicated prior to the onset of the COVID-19 pandemic, which began in March, 2020. Accordingly, the belated reliance placed by Respondent No. 1 on COVID-19 to justify delay in filing its evidence is wholly unfounded.
- 18.6. The Impugned Order allowed the interlocutory petition filed by Respondent No. 1 and takes on record its evidence filed under Rule 45 after a delay of nearly two years and eight months, in clear violation of Rule 45 of the Trade Marks Rules, 2017. Respondent No. 2 clearly exceeded its jurisdiction in allowing the interlocutory petition as the law expressly prescribes a mandatory and non-extendable timeline for filing evidence in support of opposition, i.e., two months from receipt of the counter statement. There is no statutory power conferred on the Registrar to condone delays beyond the prescribed period. Rule



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45 is mandatory, as opposed to being directory, and admits of no discretion in condoning delay beyond the prescribed two-month period. In support of the aforesaid contention, reliance is placed on the decisions in the following cases:

- a). *Sun Pharma Laboratories Ltd v. Dabur India Ltd & Anr.*, 2024 SCC OnLine Del 813
- b). *Mahesh Gupta v. Registrar of Trademarks & Anr.*, 2024 SCC OnLine Del 1750
- c). *Surinder Corporation v. Hindustan Lever Ltd. & Anr.*, 2007 SCC OnLine Del 1018

18.7. The Impugned Order has the effect of reopening opposition proceedings that stood abandoned since 2019, thereby causing continued prejudice to the Appellant who is the honest and prior user/adopter of the Subject Mark and has been waiting for over 22 years for the registration of the Subject Mark.

18.8. Respondent No. 2 has recorded in the Impugned Order that in compliance of communication of Counter Statement, the Opponent did not comply with Rule 45(1) of the 2017 Rules, within the prescribed time. Further, neither any evidence in support of the 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.

18.9. Respondent No. 1's own interlocutory petition was filed under Rule 45 of the 2017 Rules and at no stage before the Registrar



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did Respondent No. 1 raise any objection as to the applicability of the 2017 Rules.

18.10. Under both Trade Marks Rules, 2002 (“**2002 Rules**”) and 2017 Rules, the statutory period for filing the evidence is mandatory, and failure to comply results in the opposition being deemed to be abandoned. Consequently, irrespective of which set of Rules is applied, the opposition stood abandoned and no discretion vested in the Registrar to condone such delay. In support of this contention, reliance is placed on the decision in *ITC Limited v Deputy Registrar of Trade Marks and Others*, 2024 SCC OnLine Del 1660.

18.11. The sole explanation offered for the delay is that the erstwhile counsel failed to file evidence, and the same is not a legally sustainable ground for condonation as litigants are expected to exercise due diligence in pursuing their matters. A party cannot escape the consequences of negligence or inaction by blaming its counsel, particularly when no steps were taken to monitor the progress of the case for several years. In support of this contention, reliance is placed on the decisions in the following cases:

- a). *Rajneesh Kumar and Another v. Ved Prakash*, 2024 SCC OnLine SC 3380
- b). *Nitin Mahadeo Jawale and Others v. Bhaskar Mahadeo Mutke*, 2024 SCC OnLine SC 3468
- c). *Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd.*, 2017 SCC OnLine Del 8491



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- 18.12. Respondent No. 2 has acknowledged in the Impugned Order that the reasons provided by Respondent No. 1 for permitting the Interlocutory Petition lack substantial merit, yet inexplicably proceeds to allow the said petition.
- 18.13. Conduct of Respondent No. 1 reveals not an isolated lapse, but a pattern of disregard for procedural timelines, which is evident from the filing of the Notice of Opposition itself nearly seven months after advertisement of the Subject Mark, beyond the statutorily prescribed four-month period. Respondent No. 1 has exhibited a consistent pattern of disregard for statutory procedures and timelines not only in the present opposition proceedings but also in another opposition filed by it against the Appellant's Trade Mark Application bearing No. 1054654 for the registration of the Mark 'TIVOLI' in Class 16. The same was dismissed for want of prosecution by order dated 11.10.2018, following repeated failure of Respondent No. 1 to appear in hearings.
- 18.14. On 05.05.2016, the Appellant filed a request with Respondent No. 2 for taking the said Counter Statement on record and serving the same on Respondent No. 1 without any further delay. Respondent no. 1 was duly copied in the said request letter.
- 18.15. Thereafter, under cover of letter dated 22.10.2019, the Appellant filed a request with the Registrar of Trademarks to dismiss the opposition under Rule 45(2) as the Respondent No. 1 had not filed its evidence in support of its opposition or any



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reliance letter within prescribed time under Rule 45. Respondent No. 1 was duly copied in the said letter as well.

18.16.The Appellant under cover of letter dated 27.09.2023 and 24.04.2024 informed Respondent No. 2 of Respondent No. 1’s dilatory tactics of not attending hearings and seeking repeated adjournments in the matter. Despite the Appellant’s continuous and diligent participation in opposition proceedings for over two decades, including timely filing of the counter-statement and repeated follow-ups with the Registry, the Registrar has erroneously permitted Respondent No. 1 to revive an opposition that clearly stood abandoned under Rule 45(2) of the 2017 Rules.

18.17.The Impugned Order was received by the Appellant on 05.05.2025. The present Appeal was filed by the Appellant on 03.08.2025 vide diary number 5388078/2025, within the limitation period of 3 months provided for under the Act.

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2.	C.A./COMM/IPD-TM)-45/2025 Registered as : /	5894138/2025	DOCUMENT	19/08/2025 5:29 PM
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18.18. Appellant's application for the registration of the Subject Mark was filed in 2003 and has not proceeded to registration even after 22 years. Respondent No. 2 allowed the Letter of Reliance and Interlocutory Petition filed by Respondent No. 1 solely on the ground that no harm or disadvantage would be caused to the Appellant, which undermines the Appellant's rights and efforts in pursuing the said application for over 22 years.

18.19. In view of the foregoing submissions, it is prayed that the present Appeal be allowed and the Impugned Order be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

19. The learned Counsel for Respondent No. 1 has made the following submissions:

19.1. Respondent No. 1 adopted the Subject Mark in the year 1994 and has continuously and extensively used it since then. Respondent No. 1 is the registered proprietor as well as the copyright holder for the Subject Mark in India.

19.2. Respondent No. 1 through a routine perusal of the Trademarks Journal came across the Appellant's Trade Mark application bearing no. 1236500 for the registration of the Subject Mark in class 42.

19.3. Upon coming across the said application of the Appellant, Respondent No. 1 immediately filed Notice of Opposition against the said application *vide* Opposition no. 235441 dated 29.08.2006.



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- 19.4. The present dispute should be dealt with and decided under the 2002 Rules since the dispute arose in the year 2006. Reliance is placed upon the decision in *Mahesh Gupta v. Registrar of Trademarks*, 2024 SCC OnLine Del 1750, wherein the Division Bench of this Hon'ble Court has categorically observed that the 2017 Rules would not impact pending proceedings initiated under the 2002 Rules.
- 19.5. After the Appellant filed their Counter statement on 29.09.2011, which as per the online records of Respondent No. 2, had been allegedly served on 08.07.2019 upon the erstwhile counsel of Respondent No. 1 with a copy marked to the Appellant.
- 19.6. Rule 49(1) of the 2002 Rules states that Respondent No. 2 is obliged to serve a copy of the applicant's Counter Statement upon the Opponents within 2 months from the date of receipt of the applicant's Counter statement.
- 19.7. In the present case, the copy of the Counter Statement had been filed by the Appellant with the Respondent No. 2 on 29.09.2011, which had been received by Respondent No. 2 on 04.10.2011. Therefore, Respondent No. 2 was obliged to serve a copy of the Appellant's Counter Statement before 04.12.2011 as per Rule 49(1) of the 2002 Rules. Therefore, Respondent No. 2 drastically failed to fulfil its duty as a statutory authority.
- 19.8. The said service notice of the Appellants' Counter Statement allegedly dated 08.07.2019 was dispatched through post by Respondent No. 2 only on 03.08.2019 *vide* Dispatch No. 4220361 with the said service notice of Counter Statement only



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being served to the Respondent No.1's erstwhile counsel, i.e., Anand & Anand.

- 19.9. The said service notice of Appellant's Counter Statement had never actually been served to Respondent No. 1. In support of this contention, reliance was placed upon the judgement of ***Purushottam Singhal Proprietor Prime Cable Industries v. Registrar of Trade Marks and Another***, 2023 SCC OnLine Del 1641.
- 19.10. On 18.01.2022, Respondent No. 1 filed for change of attorney and also filed for extension of time for one month in accordance with Section 131 of the Act, since the newly appointed counsel didn't receive the complete paper book for Opposition no. 235441 from the erstwhile counsel of Respondent No. 1.
- 19.11. On 09.03.2022, Respondent No. 1 filed their letter of reliance under Rule 45 along with Interlocutory Petition stating that neither Respondent No. 1 nor Respondent No. 1's erstwhile counsel were served with a copy of Counter Statement by the Trade Mark Office *vide* its letter dated 08.07.2019 neither through post nor through email.
- 19.12. The erstwhile counsel of Respondent No. 1 had never provided their email address for the purpose of communication back in their Notice of Opposition in the year 2006, and therefore, the question of service notice of Counter Statement through email to the Respondent No. 1's erstwhile counsel does not arise at all.



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19.13. Respondent No. 1 in the said Interlocutory Petition dated 09.03.2022 further stated that the erstwhile counsel never informed them of receipt of any Counter Statement from the Trade Mark Office and since there was no communication from the erstwhile counsel, Respondent No. 1 was not aware of the same. Therefore, the delay in filing evidence affidavit in support of the opposition by Respondent No. 1 was completely unintentional.

19.14. Respondent No. 1s' limitation to file evidence affidavit in support of opposition shall only commence upon effective service by Respondent No. 2 as well as effective receipt by the Respondent No. 1 which has not been not been satisfied in the instant case since neither the erstwhile counsel of Respondent No. 1 nor Respondent No. 1 themselves were served with a copy of the Appellant's Counter Statement by Respondent No. 2. In support of the said contention, reliance is placed upon the following decisions:

- a. ***Ramya S. Moorthy v. Registrar of Trade Marks and Anr.***, 2023 SCC OnLine Mad 5305
- b. ***Royal Classic Mills Private Limited v. The Polo/ Lauren Company L. P. & Anr.***, CMA(TM)No.18 of 2025
- c. ***Samsudeen A v. Registrar of Trade Marks***, 2024 SCC OnLine Mad 6309
- d. ***Mars Incorporated v. Registrar of Trade Marks & Ors.***, C.A.(COMM.IPDTM) 88/2024



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e. *Purushottam Singhal v. Registrar of Trademarks*, 2023 SCC OnLine Del 1641

f. *Coaster Shoes Company Private Limited vs. Registrar of Trade Marks & Ors.*, 2024 SCC OnLine Bom 2871

19.15. Further, by March 2020, the COVID-19 pandemic had been declared across the country and effective communication was severely hampered. Despite such difficult times, Respondent No. 1 had already started taking restorative steps towards prosecution of Opposition No. 235441 in January 2022 and by March 2022, had also filed their letter of reliance along with Interlocutory Petition. Hence, Respondent No. 1 has always acted in a diligent manner towards its opposition.

19.16. If the present appeal is allowed, the valuable rights of Respondent No. 1 would be severely prejudiced due to mistakes and / or callousness of the Respondent No. 1s' erstwhile counsel. Reliance is placed upon the decision in the case of *M/S V-Guard Industries Ltd. v. Registrar of Trademarks*, 2023 SCC OnLine Del 59, wherein it was observed that while procedural provisions are required to be accorded their due deference, they cannot be interpreted so rigidly as to result in evisceration of substantive rights.

19.17. Further, it is well-settled that the litigants should not be made to suffer because of advocate's fault or mistake. In support of the said contention, Respondent No. 1 placed its reliance upon the following decisions:



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a. *European Union v. Union of India*, 2022 SCC OnLine Del 1793

b. *HDFC Bank Ltd. v. Union of India*, (2023) 5 SCC 627

19.18. The said opposition proceedings have been pending for the past 19 years and no prejudice would be caused to the Appellant if the subject matter of the opposition is decided on merits before the Registrar of Trademark in an expeditious manner.

19.19. It is also important to note that the Impugned Order was passed on 24.04.2025, and the Appellant waited for almost 4 months to institute the present Appeal on 05.08.2025. In the meanwhile, the Appellant has already filed their evidence affidavit in support of their application on 11.07.2025 and Respondent No. 1 have also complied with their evidence affidavit in support of Opposition on 11.08.2025.

19.20. In view of the foregoing submissions, Respondent No. 1 prayed that the present Appeal be dismissed.

ANALYSIS AND FINDINGS:

20. Heard the learned Counsel for the Parties and perused the material placed on record.

21. The learned Counsel for Respondent No. 1 contended that the present Appeal is barred by limitation as the same was filed on 03.08.2025, whereas the Impugned Order was passed on 23.04.2025 and therefore, the three month-period prescribed under Section 91 of the Act to file the present Appeal, had already elapsed. *Per contra*, the learned Counsel for the Appellant contended that the Appellant received the Impugned Order on



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05.05.2025, and therefore, the present Appeal is not time-barred under the aforesaid provision of the Act.

22. Section 91(1) of the Act provides that any person aggrieved by an order or decision of the Registrar under the Act or the rules made thereunder, may prefer an appeal within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

23. In the present case, as the Impugned Order was communicated to the Appellant on 05.05.2025, and thereafter, the present Appeal was filed on 03.08.2025, it is clear that the present Appeal was filed within the timeframe of three months prescribed under Section 91(1) of the Act. Hence, the present Appeal is not time-barred under the Act.

24. The learned Counsel for Respondent No. 1 contended that 2002 Rules are applicable in the present case, as opposed to 2017 Rules. The learned Counsel for the Appellant submitted that irrespective of whether 2002 Rules or 2017 Rules are applied, the outcome of the present Appeal shall remain the same.

25. In this respect, it is imperative to refer to the decision of this Court in ***Sun Pharma Laboratories Ltd v. Dabur India Ltd & Anr.***, 2024 SCC OnLine Del 813, wherein it was held as under:

“49. The sum and substance of the above discussion is that upon the counter statement being received by the Opponent from the Applicant, the two months’ period begins to run. The counter statement need not be served by the Registrar upon the Opponent. If the evidence is not filed within the two months’ period, the opposition would be deemed to have been abandoned as the Registrar has no discretion either under Rule 50 of the 2002 Rules or Rule 45 of the 2017 Rules or Rules 101



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and 109 of the 2002 Rules and the 2017 Rules respectively, to extend the time period.

50. *This interpretation is also in line with the stand of the Trade Marks Registry i.e., to have strict timelines for opposition proceedings so that the Opponents cannot unduly and indefinitely delay the processing of trade mark applications towards registration.”*

26. Perusal of the above-quoted judgment suggests that there is merit in the Appellant’s contention that the outcome of the present Appeal shall remain the same regardless of whether 2017 Rules or 2002 Rules are applied as both Rule 45 of the 2017 and Rule 50 of the 2002 Rules impose strict timelines, and the Registrar has no discretion under the said provisions to extend the time period provided for therein. Consequently, if the evidence is filed after the timeline imposed by the said provisions, the opposition would be deemed to have been abandoned.

27. As noted in the order dated 19.11.2025, Respondent No. 2 had produced the extracts of the Dispatch Register along with the Excel Sheets showing the dispatch of the Notice dated 08.07.2019 serving the Counter Statement *vide* Dispatch No. 4220361. In this respect, it is apposite to refer to Rule 18 of the 2017 Rules, which is extracted hereunder:

“18. Service of Documents by the Registrar.-

(1) All communications and documents in relation to application or opposition matter or registered trade mark may be served by the Registrar by leaving them at, or sending them by post to the address for service of the party concerned or by email communication.

(2) Any communication or document so sent shall be deemed to have been served, at the time when the letter containing the same would be delivered in the ordinary course of post or at the time of sending the email.

(3) To prove such service, it shall be sufficient to prove that the letter was properly addressed and put into the post or the email



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communication was sent to the email id provided by the party concerned.”

28. A perusal of Rule 18(3) of the 2017 Rules as quoted above clearly shows that such service shall stand sufficiently proven if the letter was properly addressed and put into the post by the Registry. Similarly, Rule 15(3) of the 2002 Rules provides for the same threshold to prove effective service on the party concerned.

29. In the present case, as noted above, the Dispatch Register along with Excel Sheets show dispatch of the Notice serving Counter Statement dated 08.07.2019 *vide* Dispatch No. 4220361 to Respondent No. 1’s Trade Mark Agent, i.e., Indian Trade Mark Company, and its erstwhile Counsel, Anand & Anand, at the addresses recorded in the aforesaid Excel Sheets. Therefore, it is clear that there was effective service of Notice serving Counter Statement, upon Respondent No. 1 by Respondent No. 2.

30. The Division Bench of this Court in ***Mahesh Gupta v. Registrar of Trade Marks & Anr.***, 2024 SCC OnLine Del 1750, has held that:

“72. Under the 2017 Rules, evidence in support of opposition is liable to be tendered within two months from the service of a copy of the counter statement. As was the position prevailing under the earlier statutory regimes, this Rule too gave an option to the opponent to either submit evidence in support of opposition or to apprise the Registrar that no further evidence was sought to be adduced. Rule 45 also deleted the additional time of one month which could have been sought under the erstwhile 2002 Rules and as per the provisions contained in Rule 50. The Rule thus puts in place a maximum period of two months and proceeds further to prescribe the consequences of a failure to abide by the time frames contained in Rule 45(1). The Rule thus is clearly intended to introduce a maximum limit of two months within which evidence in support of opposition may be tendered failing which the opponent would be deemed to have abandoned it altogether. Rule 46 of the 2017 Rules is similarly structured since there too, a maximum



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window of two months stands stipulated within which evidence in support of the application may be submitted with the Registrar. An option similar to the one accorded to the opponent in Rule 45, namely, of apprising the Registrar that no further evidence is sought to be led is conferred on the applicant. The concept of deemed abandonment stands replicated in this Rule also.

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74. Since sub-rule (2) of Rules 45 and 46 of the 2017 Rules embody the deemed abandonment principle, it leads us to the inevitable conclusion that the two-month period as prescribed therein is clearly the maximum time limit which the Rules contemplate. Another facet of significance is the absence of the phrase “unless the Registrar otherwise directs”, which though existing in Rule 53 of the 1959 Rules, is conspicuously absent in sub-rules (2) of Rules 45 and 46. The abandonment of an application upon the expiry of the maximum period prescribed under the 2017 Rules is thus neither avoidable nor does the Registrar stand placed with the statutory discretion to either avoid such an eventuality coming into effect or reverse a liability which may be incurred.”

31. Perusal of the above-quoted decision shows that under Rule 45 of the 2017 Rules, evidence in support of opposition is liable to be tendered within two months from the service of a copy of the counter-statement. It is further noted that Rule 45 of the 2017 Rules also deleted the additional time of one month, which could have been sought under Rule 50 of the 2002 Rules. Therefore, it is clear that upon the expiry of the maximum period as prescribed under the said Rule, the consequence of failure to abide by the time frame would be deemed abandonment of the opposition.

32. In the present case, the Interlocutory Petition was filed by Respondent No. 1 before Respondent No. 2 after a delay of over two years, which is beyond the mandatory time limit provided for under both the 2002 Rules and the 2017 Rules.

33. Respondent No. 1 also submitted that a party cannot be made to suffer because of the fault or mistake of its Advocate. It was further argued that in



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the present case, the erstwhile Counsel of Respondent No. 1 did not communicate that a copy of the Appellant's Counter Statement has been served upon them.

34. The Supreme Court in **Rajneesh Kumar & Anr. v. Ved Prakash**, 2024 SCC OnLine SC 3380 has held that:

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

35. Similarly, in **Nitin Mahadeo Jawale & Ors. v. Bhaskar Mahadeo Mukte**, 2024 SCC OnLine SC 3468, it was observed as under:

“7. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.

8. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

36. In view of the above decisions, the settled position of law is that even if a party's counsel is careless or negligent, the same by itself cannot be a ground to condone inordinate delay as a litigant should be vigilant of its own rights and about the judicial proceedings pending before any forum, which was initiated at his instance.



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37. In the present case, Respondent No. 1 claims that even if there was effective service of the Counter-Statement by Respondent No. 2, the erstwhile Counsel of Respondent No. 1 never communicated the same to Respondent No. 1 and, therefore, Respondent No. 1 failed to file its evidence.

38. However, it is noted that the conduct of Respondent No. 1 does not inspire confidence as *firstly*, Respondent No. 1 filed the Interlocutory Petition after an inordinate delay of two years, which shows that it was not vigilant of the opposition proceedings before Respondent No. 2; *secondly*, in the present case, Respondent No. 1 took active steps in the opposition proceedings after an inordinate delay of over two years only after a hearing notice was issued to Respondent No. 1 on 05.01.2022, granting the opportunity to show cause as to why its opposition shall not be deemed abandoned under Rule 45(2) of the 2017 Rules, for the failure to submit evidence in support of the said opposition within the prescribed time; and *lastly*, Respondent No. 1 has exhibited a pattern of disregard for procedural timelines which is also evident from the opposition proceedings in another matter filed by Respondent No. 1 against the Trade Mark Application bearing No. 1054654, wherein Respondent No. 1's opposition was dismissed for want of prosecution *vide* order dated 11.10.2018, despite hearing notices being regularly served upon Respondent No. 1.

39. It is also important to note that even Respondent No. 2 in the Impugned Order has acknowledged that the grounds taken by Respondent No. 1 in support of the Interlocutory Petition lack substantial merit.

40. Therefore, Respondent No. 1 cannot put the entire blame on the erstwhile Counsel for the inordinate delay caused in the filing of evidence in



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the Opposition proceedings before Respondent No. 2, as there is nothing to show due diligence on Respondent No.1's part or that it acted with alacrity in pursuing the said Opposition proceedings.

41. As the timeline provided for filing the evidence in the Opposition proceedings under both the 2002 Rules and the 2017 Rules are strict and cannot be extended, Respondent No. 2 has erred by allowing the Interlocutory Petition filed by Respondent No. 1.

42. In view of the discussion above, the Impugned Order dated 23.04.2025 deserves to be set aside. Accordingly, the present Appeal is allowed and Impugned Order dated 23.04.2025 passed by the learned Assistant Registrar of Trade Marks, Delhi is quashed and set aside. Pending Applications stand disposed of.

43. A copy of this Judgment shall be sent to the Registrar of Trade Marks at e-mail address: llc-ipo@gov.in, for necessary compliance.

TEJAS KARIA, J

FEBRUARY 28, 2026

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