

# INTELLECTUAL PROPERTY APPELLATE BOARD

Guna Complex Annexe-I, 2nd Floor, 443, Anna Salai, Teynampet,  
Chennai-600018

Dy.No.3114/2009/TM/IPAB

FRIDAY, THIS THE 22<sup>ND</sup> DAY OF JANUARY, 2010

Hon'ble Ms.S.Usha

...Vice-Chairman

Hon'ble Shri Syed Obaidur Rahaman

...Technical Member

Smt.Ammi Karan,  
Proprietrix,  
Trading as M/s K.K.R. Modern Rice Mills,  
Okkal Post,  
Kalady

...Petitioner/Applicant

(By Advocate Ms. K.Chitra)

Vs.

1. M/s Nirapara Roller Mills Private Limited,  
Industrial Nagar P.O.,  
Changanacherry 686 106.

2. The Assistant Registrar of Trade Marks,  
Trade Marks Registry,  
Chennai.

...Respondents/Respondents

(By Advocate None)

**ORDER** No. 25/2010

**Hon'ble Ms.S.Usha, Vice- Chairman:**

The miscellaneous petitions have been filed by the petitioner to set aside the order of abandonment and also to condone the delay of 92 days in filing the setting aside petition.

2. The matter was placed before us for deciding the issue of maintainability of the petition for restoration and to condone the delay in filing the same as the original rectification application and the miscellaneous

petition were treated as abandoned as per the provisions of sub rule (2) of rule 17 of the Intellectual Property Appellate Board (Procedure) rules, 2003.

3. The counsel for the petitioner appeared on 21.12.2009 and submitted that there was a delay of 92 days in filing the restoration petition. The reason for the delay was that the petitioner was unwell and could not instruct the counsel for filing the restoration petition. The matter was subsequently adjourned to 23.12.2009 for the counsel to work out on the issue of maintainability as nothing was submitted on that day. The counsel appeared on 23.12.2009 and intended to file a medical certificate in proof of the petitioner's illness, but nothing was submitted as to the maintainability of the restoration petition.

4. The word 'Abandoned' has been defined in Whartons Law Lexicon as – " a thing banned or denounced as forfeited or lost, whence to abandon, desert or forsake as lost and gone. The word "abandon" means in its ordinary and general meaning does not signify merely "leaving" but leaving completely and finally giving up all concern in, complete leaving of a thing as final rejection of one's responsibilities so that the thing becomes ownerless. There must be total or complete giving up of duties so as to indicate an intention not to resume the same to constitute abandonment.

5. "The word 'abandoned' is not defined. The word 'abandoned' and 'withdrawn' are used alternatively. This means the word "abandoned" takes colour from the expression 'withdrawn'. "Withdrawn" means to remove from the files of the Court and this prevents the cause of action being tried. If that be so, the word 'abandoned' means to give up with intent of never again resuming one's right or interest – 1989 (1) Kerala L.J 51- Madhavi Amma Vs. Sailaja

6. The original rectification was treated as abandoned. When that be the case, the Appellate Board cannot restore the application which has been taken out of the Court. Based on the observations of the Kerala Court, we are of the view that the orders cannot be recalled and the file cannot be restored and taken on record.

7. The objection of the Registry as to maintainability is therefore upheld and the miscellaneous petitions are dismissed as not maintainable without costs.

Sd/  
(Syed Obaidur Rahaman)  
Technical Member

Sd/  
(S.Usha)  
Vice -Chairman

Vvrk

