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

% *Date of Decision: 17th July, 2026*

+ W.P.(C)-IPD 28/2026 and C.M. Nos.175-176/2026

ARUN KUMAR GUPTAPetitioner

Through: Mr. Pankaj Kumar, Advocate.

versus

REGISTRAR OF TRADEMARKSRespondent

Through: Mr. Gaurav Barathi, SPC with Mr. Chitrantan Priyadarshan and Ms. Amita Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is filed on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to the Respondent to restore the registration of Petitioner's trademark ODEON in Class 11 registered under no. 483044 or in the alternative for a direction to the Respondent to permit the Petitioner to file a renewal application and grant an opportunity of hearing in this regard.

2. To the extent necessary, the facts as averred in the petition are that Petitioner's trademark ODEON was registered from 21.12.1987 to 21.12.1994 and thereafter renewed upto 21.12.2008. The trademark was initially registered in the name of Petitioner's predecessor, Mr. Ram Kumar Gupta, who was trading as M/s Gupta Plastics & Electric Works. Mr. Ram Kumar expired on 29.02.1992 and after his death, the Petitioner who is his



son, filed recordal application on FORM TM-24 on 30.10.2001 to transfer the trademark in his name. The trademark was to be renewed but no notice under FORM-O3 was sent to the Petitioner or his attorney M/s Delhi Registration Service.

3. It is stated that due to non-receipt of the mandatory notice required under Section 25(3) of the Trade Marks Act, 1999 (1999 Act), Petitioner could not file the renewal application for two consecutive 10-years periods i.e., 21.12.2008 to 21.12.2018 and 21.12.2018 to 21.12.2028. Non-filing of the renewal application and prescribed fees on time was thus not attributable to the Petitioner in the absence of notice on FORM-O3. Petitioner filed an interlocutory petition on 04.02.2019 seeking renewal of the trademark ODEON followed by several reminders on 21.06.2019, 06.01.2023, 15.01.2024 and 09.06.2026, but no action was taken by the Respondent and ultimately the Petitioner found that the status of the trademark was reflected as 'removed' and aggrieved by this, Petitioner filed the present petition.

4. Learned counsel for the Petitioner submits that the trademark ODEON has been wrongly 'removed' from the Register without first sending notice on FORM-O3 to the Petitioner. Issuance of renewal notice is mandatory under Section 25(3) of 1999 Act *sans* which, Petitioner could not have filed the renewal application and/or paid the renewal fees within the prescribed time. Since there is non-compliance of the mandate of law by the Respondent, Petitioner cannot be faulted and suffer the consequence of his mark being removed and in this context, reliance is placed on order of this Court passed on 28.05.2019 in ***Vijay Kumar Salwani Trading as M/s Modern Namkeen Bhandar v. Union of India and Anr., W.P.(C) 9270/2015*** as also on the judgment of this Court in ***Rakesh Kumar Mittal v.***



Registrar of Trade Marks, 2025 SCC OnLine Del 3860 and an earlier judgment in ***Union of India & Ors. v. Malhotra Book Depot, 2013 SCC OnLine Del 828***.

5. Mr. Gaurav Barathi, learned SPC appearing for the Respondent justifies the action of removal on the ground that in the absence of a renewal application by the Petitioner it was not open to the Respondent to automatically renew the registration and also contests the petition on the ground that Petitioner has approached this Court belatedly.

6. After hearing the learned counsels for the parties, this Court finds merit in the submissions of the Petitioner. Section 25(3) of 1999 Act provides that at the prescribed time before the expiration of the last registration of a trademark, 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, upon which renewal of registration may be obtained and if on the expiration of the time prescribed in that behalf, the conditions are not complied with, Registrar may remove the trademark from the Register. It is no longer *res integra* that issuance of notice under FORM-O3 is a mandate of law and Registrar is obliged to send the same to a registered proprietor before the expiry of the last registration. In ***Malhotra Book Depot (supra)***, this Court observed as follows:-

“13. Even otherwise, on a plain reading of Section 25, the inescapable conclusion is that though the period of registration was prescribed as seven years, renewable from time to time on application in the prescribed manner within the prescribed time [under Sub-Sections (1) & (2)] but the removal of the mark from the register has been made subject to sending of a notice in the prescribed manner calling upon the registered proprietor to renew the mark and permitted only upon the failure of the registered proprietor to do so [under Sub-Section (3)] and not merely on the failure of the registered proprietor to apply for renewal within the prescribed time.



14. The Supreme Court, though in the context of a Rent Legislation, in *E. Palanisamy v. Palanisamy* (2003) 1 SCC 123 reiterated in *Sarla Goel v. Kishan Chand* (2009) 7 SCC 658, emphasized the importance of following the statutory procedure step by step and held an earlier step to be a precondition for the next step and it being impermissible to straightaway jump to the last step. It was further held that the last step can come only after the earlier step has been taken. The Trade Marks Act is an Act for the benefit of the proprietors of trademarks (refer *Thukral Mechanical Works v. P.M. Diesels Pvt. Ltd.* (2009) 2 SCC 768). When the Act itself has prescribed the procedure for removal, we do not find any justification for holding the said procedure to be not mandatory or not binding on the Registrar or to uphold the removal even if such procedure is not followed. We are here concerned with the legislative interpretation and cannot be guided by the consequences as argued by the counsel for the appellants, which may follow as a result of the said interpretation. Where the statute is clear, the Court has to give effect to the right created and should not restrict that right merely in order to minimize litigation. It has been held in *Coal India Ltd. v. Saroj Kumar Mishra* (2007) 9 SCC 625 that legislative interpretation cannot be rejected merely for the reason of opening the floodgates of applications or litigations.

15. The Supreme Court in *Sukhnandan Saran Dinesh Kumar v. Union of India* (1982) 2 SCC 150 also held that where the power conferred to do a certain act is a conditional one, the satisfaction of that condition giving rise to the occasion to exercise the power is a must. Similarly in *competent authority v. Barangore Jute Factory* (2005) 13 SCC 477 it was observed that when each step is a consequence of an earlier step in the sense that all steps are linked to the initial one, upon the initial step being not in accordance with law, the foundation goes and the rest of the edifice falls.

16. Section 25(3) providing for sending of a notice prescribes removal of the trademark only if at the expiration of the time prescribed in the notice, the conditions required therein to be fulfilled have not been complied. The Supreme Court recently in *Head Master, Lawrence School Lovedale v. Jayanthi Raghu* AIR 2012 SC 1571 held that the use of the word if is meant to indicate a condition. Thus, Section 25(3) cannot be interpreted as permitting removal without the condition of sending of notice being complied with: Earlier also, a Full Bench of the Punjab & Haryana High Court in *Harbans Singh v. State of Punjab* AIR 1987 P & H 19 held that the word if is always expressive of a condition.”

7. This position of law was reaffirmed by this Court in **Rakesh Kumar Mittal (supra)**, holding that before removal of the trademark from the Register, issuance of notice under Section 25(3) is a mandatory



pre-condition. Court referred to the judgment in **Malhotra Book Depot (supra)**, in this regard as also the judgments of the Bombay High Court in **Cipla Ltd. v. Registrar of Trade Marks and another, 2013 SCC OnLine Bom 1270** and **Kleenage Products (India) Private Limited a company registered under the Companies Act, 1956, having its registered office at Gat No. 227, 228 & 230, Alandi Markal Road, Village Markal, Tal : Khed, Dist. Pune 412105, Maharashtra v. Registrar of Trade Marks Boudhik Sampada Bhawan, S.M. Road, Antop Hill, Mumbai and Others, 2018 SCC OnLine Bom 46** and the judgments of this Court in **Gopal Ji Gupta v. Union of India and Another, 2019 SCC OnLine Del 7670**; **Promoshirt SM. Pvt. Ltd. v. Registrar of Trade Marks, 2024 SCC OnLine Del 7722**; as also the order in **Ashok Bhutani v. The Registrar of Trade Marks & Anr., W.P.(C)-IPD 22/2024**, decided on 27.09.2024, where Courts have consistently held that mere expiration of trademark registration by lapse of time and/or failure of registered proprietors to get renewal, does not *ipso facto* justify the removal of the mark from the Register and such removal must be preceded by strict compliance with the procedural requirement of sending FORM-O3 notice by the Registrar, notifying the registered proprietor of the impending expiration of the registration and conditions for its renewal. In **Rakesh Kumar Mittal (supra)**, the Court allowed the writ petition and restored the registration of the mark in question and permitted the Petitioner to file renewal application and comply with all necessary formalities. The same direction was given by this Court in **Vijay Kumar (supra)**, noting that there was non-compliance of the mandate of Section 25(3).



8. Present case is covered on all four corners by the aforementioned judgments. Mr. Barathi is unable to deny that FORM-O3 notice was not sent to the Petitioner prior to removing his mark ODEON from the Register of Trade Marks and therefore, there is a clear violation of the mandate of Section 25(3). Trademark ODEON was registered under registration no. 483044 in Class 11 on 21.12.1987 upto 21.12.1994 and was subsequently renewed upto 21.12.2008. As notice on FORM-O3 was not received, Petitioner did not file the renewal application and the mark was removed from the Register in the absence of the renewal application and the requisite fees. In my view, Petitioner cannot be faulted for non-filing of renewal application *sans* a notice on FORM-O3. Therefore, the action of the Respondent in removing the mark from the Register is legally untenable. The objection of delay also warrants rejection since Petitioner had not received the notice and secondly, even in ***Rakesh Kumar Mittal (supra)***, the petitioner had approached the Court after several years but was granted relief finding that the Petitioner could not be faulted. In the instant case also Petitioner never received the notice and followed up the matter by filing interlocutory application and several reminders. In my view, Petitioner should not suffer the serious consequence of removal of his mark due to the inaction of the Respondent merely on ground of delay.

9. Accordingly, Respondent is directed to restore and reinstate the registration of Petitioner's trademark ODEON under registration No.483044 in Class 11. Petitioner is permitted to file an appropriate application for renewal of the mark along with prescribed fees and comply with all other requisite formalities for renewal of the mark. The application shall be filed within a maximum period of six weeks from today and on receipt of



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application and on completion of all formalities, Respondent shall proceed to consider the application and if found in order, shall proceed to renew the registration within a maximum period of three months from the date of receipt of the application.

10. Writ petition is disposed of in the aforesaid terms along with pending applications.

JYOTI SINGH, J

JULY 17, 2026/YA