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

+ **C.A.(COMM.IPD-TM) 152/2022 and I.A. 18744/2023**

MAJOR LEAGUE BASEBALL PROPERTIES INV, 245, PARK  
AVENUE, NEW YORK, USA ..... Appellant

Through: Mr. Anubhav Chhabra, Adv.  
versus

REGISTRAR OF TRADE MARKS, TRADE MARKS REGISTRY,  
DELHI ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar,  
CGSC, with Mr. Srish Kumar Mishra,  
Mr. Sagar Mehlawat, Mr. Alexander  
Mathai Paikaday, Mr. M Sriram and  
Mr. Krishnan V., Advs. (M: 98107  
88606)  
Mr. Mohan Vidhani, Ms. Elisha Sinha,  
Mr. Saurabh Kumar, Mr. Prakhar  
Singh, Ms. Shreya Jain and Ms.  
Mokshita Gautam, Advs. (M:  
9899150774)

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**ORDER**  
% **25.09.2023**

1. This hearing has been done through hybrid mode.

**I.A.18744/2023 (for early hearing)**

2. This appeal has been filed by the Appellant - Major League Baseball Properties INC challenging the impugned order passed by Respondent No.1- Registrar of Trademarks, dated 8th October, 2015.

3. The appellant's case is that MLBP is the proprietor of the "BLUE JAYS" mark for a variety of goods and services including but not limited to, goods in class 25. The MLBP "BLUE JAYS" mark has been used by MLBP



and its affiliated and related entities to advertise, promote and distribute the goods and services of the TORONTO BLUE JAYS, which is a professional baseball club.

4. According to the Appellant, the “BLUE-JAYS” mark has been used by the Appellant since 1976 and the fans worldwide refer to the club as “BLUE-JAYS”.

5. An application for trade mark registration was filed by the Respondent No.2 for the mark “BLUE-JAY” bearing application no.815236 in class 25 for shirts, pants, trousers, jeans, jackets and readymade garments. The Appellant had opposed the said mark on the ground that it had rights in the mark “BLUE-JAYS” with “Club”.

6. The said opposition was rejected by the impugned order on the ground that the evidence in support of the opposition was not filed in time by the Appellant.

7. The operative portion of the order reads as under:

*“In the instant case, the opponent has filed his evidence under Rule 50(1) beyond the prescribed period of two plus one month from the date of receipt of the Notice of Opposition dated 21/09/2007, which was admittedly received by the Opponent on 26/09/2007, hence, the Notice of Opposition is liable to be treated to have been abandoned under Rule 50(2) of the Trade Marks Rules, 2002.*

*It is, therefore, ordered that the Notice of Opposition No.161698 dated 03.02.2004 filed ;by Opponent M/s Major League Baseball Properties Inc., 245, Park Avenue, New York, shall be deemed to have been abandoned by the Opponent under Rule 50(2) of the Trade Marks Rules, 2002. Therefore, the Application No.815236 dated 19/08/1998 under Class 25 for the Mark “BLUE-JAY” filed by the Applicant M/s PMS*



*Creations, WZ-111, Todapur, New Delhi-110012 shall proceed further as per rule of law accordingly.”*

8. The present appeal was initially filed before the IPAB and has now been transferred to the Court post the enactment of the Tribunal Reforms Act, 2021. Notice was issued in this appeal on 15th October, 2018.

9. In the meantime, the registration certificate has been granted to the Respondent No.2 for the mark “BLUE JAY”. Considering this position, since the Respondent No.2’s opposition was dismissed due to technical/procedural delay, which took place in filing of the evidence, the merits of the opposition has not been considered.

10. The present petition is disposed of with the direction that the Appellant is permitted to pursue its remedies in law by filing a cancellation petition. The said petition shall be adjudicated on its own merits and the impugned order would not come in the way of the Appellant’s right to urge all the grounds for seeking cancellation of the Respondent No.2’s mark. All rights and contentions left open.

11. Accordingly, the early hearing application is allowed and disposed of. The appeal is also disposed of in the above terms. The next date stands cancelled.

**PRATHIBA M. SINGH, J.**

**SEPTEMBER 25, 2023/dk/ks**