**19 SCOB [2024] HCD 104**

**HIGH COURT DIVISION**
**(SPECIAL STATUTORY JURISDICTION)**
**Trade Mark Application No. 04 of 2010**

**DANISH FOODS LTD.**
**....Petitioner**
**Vs.**
**RANI FOOD INDUSTRIES LTD and another .....Opposite Parties**

Mr. Rokanuddin Mahmud, Senior Advocate with
Mr. Tanjibul Ul Alam, Advocate
Ms. Tarana Afroze, Advocate
.....For the petitioner

Dr. M. Zahir, Senior Advocate with
Mr. Abdul Matin Kashru, Advocate
Mr. Md. Ismail Miah, Advocate
Mr. Shah Muhammad Ezaz Rahman, Advocate
...For the opposite parties

Heard on: 22.05.2013, 30.05.2013, 03.06.2013, 05.06.2013, 06.06.2013, 09.06.2013, 11.06.2013 and Judgment on: 20.06.2013

**Present:**
**Mr. Justice Md. Ashfaqul Islam**
**And**
**Mr. Justice Md. Ashraful Kamal**

**Editors' Note:**
**In this case the petitioner Danish Food Limited filed an application under Section 42 and 51 of the Trade Marks Act, 2009 for removal of trade mark consisting of the word 'RANI' granted by the respondent No.2 in favour of the respondent No.1 from the register. High Court Division, however, hearing both sides, found that section 51 has no manner of application in this case and stipulations provided in section 42 of the Act, have not been fulfilled so as to order the removal. Therefore, it rejected the application.**

**Key Words:**
**Sections 41 and 42 of the Trade Marks Act, 2009; honest intention; honest purpose;**

**Sections 41 and 42 of the Trade Marks Act, 2009:**
**Section 42 of the Trade Marks Act, 2009 deals with the removal and impose limitation of the mark from the registrar book for non use of the trade mark. According to sub section (1) of section 42 of the Trade Mark Act, 2009, on the basis of any application by any aggrieved person, High Court Division or Registrar of Trade Mark can remove any mark from the register book, if the applicant of the trade mark registration of the goods or service or constituting company under section 41 of the Trade Marks Act, 2009 has no honest intention or 1(one) month prior registration of the mark had not use the mark for honest purpose or has no use the mark for honest purpose after 5(five) years and above from the date of registration. ...(Para 26)**

**Section 42 of the Trade Marks Act, 2009:**
**Both the conditions set out in cl. (a) are cumulative and not disjunctive. Cl. (a), therefore, will not apply where even though there had been no bona fide intention on the part of the application for registration to use to trade mark but, in fact, there has been a bona fide use of the trade mark in relation to those goods by any proprietor**

**thereof for the time being up to a date one month before the date of the application under S. 42(1). Similarly, Cl. (a) will not apply where, though there had been a bona fide intention on the part of the applicant for registration to use the trade mark, in fact, there has been no bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application. ...(Para 29)**

**Burden of proof:**

**When a trade mark is register the presumption would be that it is for use as such. If anyone contents that the registration was not bonafide to use that trade mark then he must show that what other purpose the registration was done. The burden of proving the facts is on the person who seeks to have the trade mark removed from the register. ...(Para 32)**

**There leaves no doubt or dispute that the registration of the trade mark confers a valuable right. The person in whose name the trade mark has been registered may take action against any person have passing of the goods. The registered trade mark confers an exclusive right of use of the trade mark in relation to the goods in which a trade mark is registered. As a person obtained a right on and from the date of registration, he can ordinarily to be deprived of his right only if it is seen that application was not a bonafide one but if it obtained for bonafide use he may not be fastened with any liability owing to non user on the part of the criticizer. ...(Para 34)**

## JUDGMENT

**Md. Ashraful Kamal, J:**

1. This Rule was issued at the instance of the petitioner Danish Food Limited under Section 42 and 51 of the Trade Marks Act, 2009 calling upon the respondent Nos.1 and 2 to show cause as to why the registered trade mark No. 90755 in Class-30 consisting of the word 'RANI' granted by the respondent No.2 in favour of the respondent No.1 should not be removed from the Register of Trade Marks and the Register be rectified accordingly.

2. Brief facts, necessary for the disposal of this Rule are as follows;

The petitioner' case is one Q.M. Babar Chaklader, sole proprietor of Chaklader Food Products had been manufacturing, marketing and selling 'spices' with trade mark word RANI in English and Bengali since 2004. Thereafter, on 14.03.2005, the said Babar Chaklader filed an application being No. 90428 before the respondent No.2 for registration of his trade mark 'RANI' in respect of Chili Powder, Turmeric Powder, Coriander Powder, Cumin Powder and all other goods included in Class-30.

3. After that, by virtue of Deed of Assignment dated 24.08.2009 and subsequent amendment thereto, the present petitioner mutated its name in place of its predecessor Babor Chaklader vide order dated 08.08.2010 passed by the Registrar of the Trade Marks allowing TM-16 dated 14.07.2010 and accordingly petitioner became the owner of the trade mark word and device 'RANI'. Then, the petitioner obtained C.M. License (quality control license) from the department of Bangladesh Standard and Testing Institution (BSTI), Dhaka in respect of their RANI branded 'Spices' being C.M. License No. 14883/G-6/2010 and 14884/G-6/2010 dated 21.07.2010.

4. But, on 05.07.2011, the Registrar of Trade Marks cancelled his earlier order dated 08.08.2010 under section 91(5) of the Trade Marks Act, 2009.

5. Thereafter, the petitioner came to know that respondent No.1 secretly filed a trade mark application consisting with very deceptively and confusingly similar trade mark word 'RANI' under No. 90755 dated 02.04.2005 in class-30 in the office of the respondent No.2 and got registration on 16.04.2010 inspite of the predecessor of the petitioner's prior application in the same class being No. 90428 dated 14.03.2005.

6. The respondent No.1 has never used the trade mark RANI in Bangladesh in respect of Spices and they have no bonafidy and definite intention to use same in respect of the goods mentioned in the application. The entry relating to the registration of trade mark No. 90755 in Class 30 was made without sufficient cause and fraudulently and the entry has been wrongly remaining on the register.

7. The Respondent No.1 by filing affidavit in opposition contested the application stating inter alia that the Family Food Industries filed Trade Mark Application No. 90755 dated 02.04.2005 in Class-30 as per Trade Marks Act, 1940 and the said application for registration of Trade Marks has been accepted. After that the Registrar issued the order of advertisement in the Trade Marks journal under section 15(1) of the Trade Mark which was communicated to the Family Food Industries vide memo No. 8831/2007 dated 24.04.2007 directing the Family Food Industries to deposit requisite fee and the negative of the mark before the Trade Mark Registrar for publishing the said Trade Mark Application. Accordingly, Family Food Industries submitted requisite fees and other things to the Registrar for publishing the said Trade Mark Application in the Trade Marks journal. Thereafter, it was published at page 2189 of the Trade Marks Journal No. 244 for the month of October-December/2007. Against the said publication, one Remfry & Son Limited filed a notice of opposition (T.M-5) on behalf of Aujan Industries Co. (L.L.C). Saudi Arabia following an assignment from Rani International Inc. of 244 whittier Circle Orlando, Florida 23306, U.S.A. Thereafter, Family Food Industries on receiving the duplicate copy of the said T.M-5 filed counter statement (T.M-6) as per Rule 32 of the Revised Trade Mark Rules 1963. On receiving the said counter statement Aujan Industries Co. (L.L.C) did not file evidence in support of opposition (T.M-6) as per Rule 32 of the Revised Trade Marks Rules, 1963 and they took several adjournments for filling evidence. Ultimately, the Assistant Registrar-4 by order dated 17.01.2010 declared the Opposition Case No. 2423 of 2009 abandoned and directed to proceeded the Trade Mark Application No. 90755 in class-30.

8. Thereafter the opponent of the said Opposition Case No. 2423 of 2009 Aujan Industries filed Review Petition under section 151 of the Code of Civil Procedure wherein Family Food Industries Ltd. filed written objection. The Assistant Registrar-4 on 24.03.2010 after hearing both the sides rejected the said review petition and issued registration certificate of registered Trade Mark No.90755 dated 02.04.2005 in Class-30. Thereafter, on an application dated 01.06.2010 filed by the Family Food Industries Limited on form T.M-.33, the Assistant Registrar has changed the Register as 'RANI Food Industries Ltd'. After publishing the Trade Mark Application No. 90755 in Class-30 published in the Trade Mark Journal No. 244 for the month of October-December, 2007 at page 2189 the learned Advocate A.B.M Shamsud Doulah on behalf of his client filed application on Form T.M-55 seeking time for filing opposition (T.M-5) against the Trade Mark Application No. 90755 in |Class-30 and the Opposition Case No. 2425 of 2009 was started and ultimately did not file any opposition and as a result the learned Assistant Registrar -4 by decision and order dated 04.06.2009

dismissed the Opposition Case No. 2425 of 2009 which was communicated to the learned Advocate of both sides by letter dated 08.06.2009 of the Assistant Registrar-4.

9. Mr. Rokanuddin Mahmud along with Mr. Mr. Tanjibul-Ul Alam, Ms. Tarana Afroze, learned Advocates appearing for the petitioner submits that granting registration certificate to Rani Food Industries Ltd., the Trade Mark Registrar did not carry out a complete search under Rule 23. Next, he submits that while issuing show case notice to Family Food Industries (Rani Food Industry) during the process of search, the Registrar failed to mention the application No. 90428 dated 14.03.2005, which was the application filed by the predecessor of the petitioner. Since the application for registration of trade mark 'Rani' filed by the Babar Chaklader is prior to the application filed by the Family Food Industries (Rani Food Industry), the Registrar is duty bound to consider the application of Babar Chaklader while processing the application of Family Food Industries. Lack of such reference clearly demonstrate that while granting registration of trade mark to Rani Food, the search was incomplete and such incompleteness is fatal to the registration process.

10. Mr. Mahmud further submits that no show cause notice dated 10.04.2007 under section 14(1) of TA 1940 was ever served upon the Babar Chaklader (Applicant of Application No. 90428 dated 14.03.2005). In the absence of any such service of notice upon the Babar Chaklader, the question of deemed lapse under Rule 24 does not arise at all.

11. He also submits that the mark was never abandoned as no order has been passed in the order sheet of Application 90428 dated 14.03.2005, therefore, the question of application for restoration by giving TM 56 does not arise at all.

12. Mr. Rokan further submits that the Registrar issued show cause notice to Babar Chaklader on 10.04.2007, which was 2 (two) years after his application dated 14.03.2005. This delay blatantly proves that the Registrar failed to comply with Rule 23 by making incomplete charge in the Registrar. He further submits that admittedly till 10.04.2007 the application of Babor Chaklader was alive so the registrar failed to consider the application 90428 in class-30 as prior one while giving show cause notice to RANI Food on 02.05.2006. This lone aspect is sufficient to strike off the trademark registration given to Rani Food.

13. Mr. Mahmud further submits that according to section 20 (1) of Trade Marks Act, 2009, registration of a trade mark shall be effective from the date of application and admittedly Rani Food submitted its application on 02.04.2005 and it has been admitted by Rani Food that it has never used the trade mark RANI till to date, therefore, on the face of the record, the trade mark RANI has not been used for more than 5 years from the registration and as such provision of Section 51 shall be attracted and the argument put forward by Rani Food that it has been prevented from using the trademark due to lack of gas connection is not tenable and therefore would not be a valid ground of defence. In this regard Mr. Mahmud refers Nabisco Biscuit & Bread Vs. Baby Food Products Ltd. 28 (2008) BLD (HCD) 304.

14. Mr. Mahmud finally submits that fraud has been committed by Family Food Industry at the time of submitting its application for registration of the mark RANI by making a specific statement in TM-1 that it had been using the mark, whereas, admittedly Family Food Industry never used the said mark at the time of submits its application TM-1 or prior to submitting the said application. The mark RANI was registered in the name of the respondent without any bonafidy use on their part which is admitted fact as per Order dated 14.10.2010. Admittedly Rani never manufactured, marketed and sold any spices with the trade mark

'RANI' which is yet to be manufactured till filling for registration. Since fraud vitiated everything, there is no scope to allow Rani Food to continue its registration of trade mark, which was obtained by making false statement.

15. Mr. Rokanuddin Mahmud finally submits that the trade mark RANI was registered in the name of the respondent No.1 without any bonafide intention on their part to use the trade mark in relation to such goods for which the same was registered and that there has in fact been no bonafide use of the trade mark in relation to those goods up to filing of the application. Since the respondent No.1 had no definite and present intention on the date of filing application to use the trade mark in Bangladesh and have not used their mark in respect of their goods for a continuous period of five years or more up to a date of one month before filing this application and as such the trade mark of the respondent No.1 being No. 90755 in Class 30, is liable to be removed from the register under section 42(1)(a) and (b) of the Trade Marks Act, 2009. While filing the application for registration of the trade mark, the respondent No.1 resorted to misrepresentation and fraud by inserting a statement in TM 1 that he had been using the trade mark since April 02, 2005 whereas the respondent No.1 is not using the said mark till to date.

16. Dr. M. Zahir alongwith Mr. Abdul Matin Kashru, Mr. Md. Ismail Miah, Mr. Shah Muhammad Ezaz Rahma, learned Advocates appearing for the respondent No.1 submits that Trade Marks registry issued notice dated 10.04.2007 under section 14(1) askeing Babar Chaklader to show cause within 3(three) months as to why his TM application being No. 90428 should not be rejected and the registrar got authority to issue such notice but Babar Chaklader did not give any reply to the said show cause notice as such his application (TM 90428) was abandoned by operation of law under rule 24(2) of the Trade Marks Rules, 1963 and no further reference to the applicant is necessary under the said sub-rule (2) of Rule 24.

17. Dr. Zahir further submits that ababdonment under rule 24(2) of the Trade Mark rules 1963 is different from abandonment under section 16(3) of the Trade Marks Act, 1940. A trade mark application becomes abandoned under rule 24(2) before acceptance of the application for registration and in such a case no further reference to the applicant is required under law. On the other hand, a trade mark is abandoned under section 16(3) with prior notice to the applicant if the registration is not completed within 12(twelve) months from the date of application. Section 16(3) must be read in conjunction with section 16(1) which makes it clear that such abandonment takes place only when the application has been accepted.

18. Dr. Zahir further submits that neither Babar Chaklader nor the appellant filed any application on TM-56 within 2(two) months under rule 24(3) of the Trade Marks Rules, 1963 for restoration of TM application 90428. He also submits that since TM application never restored by the applicant by filling TM-56 under rule 24(3) there is no scope for change the name etc. in TM application No. 90428 inasmuch as mutation in an abandoned TM application is not possible unless and until it is restored to its file as per the provisions of law.

19. He also submits that mutation and restoration are two different things. Mutation is done by filing TM-16. On the other hand an abandoned application is restored by filing TM-56. Mutation is not possible as long as an application remains abandoned and not restored as per the provisions of law.

20. Dr. Zahir further submits that since the TM application No. 90428 filed by the Babar Chaklader was abandoned in 2007 and never restored, thereafter, the said application cannot

be treated as a pending application before the Trade Mark Registry and as such, section 127 of the new Trade Marks Act, 2009 does not apply to the present case. Accordingly, the Registrar of Trade Marks is under no obligation to give notice to the petitioner under section 91 of the new Act and no formal cancellation by the Trade Mark Registry is required under law.

21. He submits that for the purpose of use of a trade mark under section 42 of the new Act the limitation should be considered from the actual date of registration and not from the date of application the mark of RANI Food Industries was registered on 26.08.2010 and thus the 5(five) years time limit is yet to expire so as to attract the provisions of section 42.

22. Dr. Zahir finally submits that the petitioner completely failed to show that the Family Food Industry had no bonafide intention to use the trade mark, when the application for registration was made.

23. This Trade Mark Application has been hotly contested and the learned Advocates on both sides have debated the points raised therein at sufficient length.

24. The petitioner who is an earlier user of the Trade Mark and also earlier applicant of the trade mark being aggrieved has filed this application under section 42 of the Trade Mark Act, 2009 alleging that the Respondent No.1 had no definite and honest intention on the date of filing application to use the trade mark in Bangladesh and have not used their mark in respect of their goods for a continuous period of five years or more up to a date of one month before filling application and respondent No.1 resorted to fraud by making misstatement in the application for registration.

25. Though the petitioner filed this Trade Mark application under section 42 and section 51, but from a plain reading of this Trade Mark Application it is abundantly clear that on the ground of *non-user* of the trade mark, the petitioner filed this trade mark application, therefore, section 51 of the Trade Mark Act, 2009 has no manner of application in this Rule.

26. Section 42 of the Trade Marks Act, 2009 deals with the removal and impose limitation of the mark from the registrar book for non use of the trade mark. According to sub section (1) of section 42 of the Trade Mark Act, 2009, on the basis of any application by any aggrieved person, High Court Division or Registrar of Trade Mark can remove any mark from the register book, if the applicant of the trade mark registration of the goods or service or constituting company under section 41 of the Trade Marks Act, 2009 has no honest intention or 1(one) month prior registration of the mark had not use the mark for honest purpose or has no use the mark for honest purpose after 5(five) years and above from the date of registration.

27. It is necessary to quote the relevant section 42 of the Trade Mark Act, 2009 which runs thus:-

> "*৪২। ট্রেডমার্ক ব্যবহার না করিবার কারণে নিবন্ধন বহি হইতে কর্তন এবং সীমাবদ্ধতা আরোপ-*
> *(১) যদি কোন সংক্ষুব্ধ ব্যক্তি নিম্নবর্ণিত কোন কারণে হাইকোর্ট বিভাগে বা নিবন্ধকের নিকট, নির্ধারিত পদ্ধতিতে, আবেদন করেন, তাহা হইলে সংশ্লিষ্ট পণ্য বা সেবার নিবন্ধিত ট্রেডমার্ক নিবন্ধন বহি হইতে কর্তন করা যাইবে-*
> *(ক) পণ্য বা সেবার ট্রেডমার্ক নিবন্ধনের আবেদনকারী বা ধারা ৪১ এর অধীন গঠনাধীন কোম্পানীর সৎ উদ্দেশ্য না থাকা সত্ত্বেও, সংশ্লিষ্ট পণ্য বা সেবার*

*ট্রেডমার্ক নিবন্ধন করা হইয়াছে এবং আবেদন দাখিলের পুর্ববর্তী ১(এক) মাস পর্যন্ত আবেদনকারী বা উক্ত কোম্পানী কর্তৃক উক্ত পণ্য বা সেবার ট্রেডমার্ক সৎ উদ্দেশ্যে ব্যবহার করা হয় নাই; অথবা*

*(খ) ট্রেডমার্ক নিবন্ধিত হইবার পরবর্তী ৫ (পাঁচ) বৎসর বা তদূর্ধ্ব সময় পর্যন্ত উক্ত পণ্য বা সেবার ট্রেডমার্ক আবেদনকারী বা কোম্পানী কর্তৃক সৎ উদ্দেশ্যে ব্যবহার করা হয় নাই।*

*(২) নিম্নবর্ণিত ক্ষেত্রসমূহ ব্যতীত, ট্রাইব্যুনাল উপ-ধারা (১) এর অধীন দাখিলকৃত কোন আবেদন প্রত্যাখ্যান করিবে না, যদি-*

*(ক) ধারা ১০ এর অধীন আবেদনকারীকে অভিন্ন বা প্রায় সাদৃশ্যপূর্ণ পণ্য বা সেবার ট্রেডমার্কের নিবন্ধনের অনুমতি প্রদান করা হয়, অথবা-*

*(খ) ট্রাইব্যুনালের নিকট প্রতীয়মান হয় যে, উক্ত পণ্য বা সেবার ট্রেডমার্ক, নির্দিষ্ট তারিখ বা মেয়াদের মধ্যে, আবেদনকারী বা কোম্পানী কর্তৃক সৎ উদ্দেশ্যে ব্যবহার করা হইয়াছে।*

*(৩) যদি কোন সংক্ষুব্ধ ব্যক্তি নিম্নবর্ণিত কোন কারণে হাইকোর্ট বিভাগে বা নিবন্ধকের নিকট, নির্ধারিত পদ্ধতিতে, আবেদন করেন, তাহা হইলে ট্রাইব্যুনাল সংশ্লিষ্ট পণ্য বা সেবার নিবন্ধিত ট্রেডমার্কের ব্যবহার বন্ধ করিবার লক্ষ্যে সীমাবদ্ধতা আরোপ করিতে পারিবে-*

*(ক) পণ্য বা সেবার ট্রেডমার্ক বিক্রয়ের উদ্দেশ্যে বা অন্যভাবে বাংলাদেশের কোন নির্দিষ্ট স্থানে ব্যবসায়ের উদ্দেশ্যে বা বাংলাদেশের বাহিরে নির্দিষ্ট কোন বাজারে রপ্তানি করিবার উদ্দেশ্যে নিবন্ধিত হইয়াছে কিন্তু নিবন্ধিত হইবার পরবর্তী ৫(পাঁচ) বৎসর বা তদূধর্ব সময় পর্যন্ত উক্ত পণ্য বা সেবার ট্রেডমার্ক আবেদনকারী বা কোম্পানী কর্তৃক সৎ উদ্দেশ্যে ব্যবহার করা হয় নাই; অথবা*

*(খ) ধারা ১০ এর অধীন একাধিক ব্যক্তিকে অভিন্ন বা প্রায় সাদৃশ্যপূর্ণ পণ্য বা সেবার ট্রেডমার্ক নিবন্ধনের অনুমতি প্রদান করা হইয়াছে, এবং উহা বিক্রয়ের উদ্দেশ্যে বা অন্যভাবে রপ্তানী করিবার উদ্দেশ্যে ব্যবহার করা হয়।*

*(৪) উপ-ধারা (১) এর দফা (খ) বা উপ-ধারা (২) এর উদ্দেশ্য পূরণকল্পে, আবেদনকারী কর্তৃক ট্রেডমার্কের ব্যবহার না করাকে এইরুপ যুক্তি হিসাবে উত্থাপন করা যাইবে না, যাহা-*

*(ক) বিশেষ পরিস্থিতির কারণে ঘটিয়াছে, এবং*

*(খ) ব্যবসায় পরিত্যাগের ইচ্ছা বা ট্রেডমার্ক ব্যবহার না করিবার কারণে ঘটে নাই।*

28. Sub-section (1) of Section 42 of the Trade Marks Act, 2009 provides for two cases in which a registered trade Mark may be taken off the register in which it is registered. The first case is set out in cl. (a) of S. 42(1) and the second in cl. (b) of that sub-section. There are two conditions to be satisfied before cl. (a) can become applicable. These conditions are:-

*1. That the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods by him, and*

*2. That there has, in fact, been no bona fide use of that trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application under S. 42(1).*

29. Both the conditions set out in cl. (a) are cumulative and not disjunctive. Cl. (a), therefore, will not apply where even though there had been no bona fide intention on the part of the application for registration to use to trade mark but, in fact, there has been a bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application under S. 42(1). Similarly, Cl. (a)

will not apply where, though there had been a bona fide intention on the part of the applicant for registration to use the trade mark, in fact, there has been no bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application.

30. C1. (b) of S. 42 (1) applies where for a continuous period of five years or longer from the date of registration of the trade mark, there has been no bona fide use thereof in relation to those goods in respect of which it is registered by any proprietor thereof for the time being. Thus, where there has been a non- user of the trade mark for a continuous period of five years and the application for taking off the trade mark from the register has been filed one month after the expire of such period, the person seeking to has the trade mark removed from the register has only to prove such continuous non-user.

31. Section 42 is a Penal Provision. It provides for civil or evil consequences. It takes away valuable right of a register proprietor. It, therefore, can be taken way only when the condition laid down therefore are satisfied.

32. When a trade mark is register the presumption would be that it is for use as such. If anyone contents that the registration was not bonafide to use that trade mark then he must show that what other purpose the registration was done. The burden of proving the facts is on the person who seeks to have the trade mark removed from the register.

33. In the present case, the petitioner completely failed to prove that the registration of the Trade Mark RANI in the name of the respondent No.1 was not bonafide to use that trade mark and the same had not been used for a contineous period of 5 years in terms of section 46(1)(b) of the Act.

34. There leaves no doubt or dispute that the registration of the trade mark confers a valuable right. The person in whose name the trade mark has been registered may take action against any person have passing of the goods. The registered trade mark confers an exclusive right of use of the trade mark in relation to the goods in which a trade mark is registered. As a person obtained a right on and from the date of registration, he can ordinarily to be deprived of his right only if it is seen that application was not a bonafide one but if it obtained for bonafide use he may not be fastened with any liability owing to non user on the part of the criticizer.

35. In the present case, it appears to us that the application of the respondent No.1 was bonafide. But it has been prevented from using the trade mark due to lack of gas connection.

36. In light of the aforesaid provisions of law and ratio decidendi, we are of the view that this application is not maintainable and the application should be rejected.

37. In the result, the application is rejected.