

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 8666 of 2023**

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TOTAL CARDIO VASCULAR SOLUTIONS PRIVATE LIMITED
Versus
REGISTRAR OF TRADE MARKS

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Appearance:

MR JATIN Y TRIVEDI(2616) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 05/05/2023****ORAL ORDER**

1. Heard Mr. Pratik Chaudhari, learned advocate for Mr. Jatin Trivedi, learned advocate appearing for the petitioner.

2. Mr. Chaudhari, learned advocate appearing for the petitioner, submitted that the petitioner herein is the registered proprietor of several trademarks used for the medical services, healthcare services and pharmaceutical products some of which are Apex Heart Institute, Apex Pharmacy, TCVS (label) all registered in the name of the petitioner. Copy of the trademark status page of the registration of the mark 'Apex' along with registration certificate is duly produced at Annexure – A to the petition.

2.1 That, the respondent No.2 is the trademark applicant, who preferred a conflicting trademark application bearing No.5153323 for the mark Apex Hearing & Speech Clinic in Class – 5. The application was accepted and advertised in the

trademark journal published by respondent No.1 vide journal No.2081 on 05.12.2022. The petitioner applied for opposition under Section 21 of the Trade Marks Act, 1999 on 05.04.2023. The opposition came to be uploaded on even date at 04.31 p.m. as stated in the petition and was also uploaded on the website of the trademark registry with the domain www.ipindia.nic.in as submitted by Mr. Chaudhari, learned advocate appearing for the writ applicant.

2.2 That, the respondent No.1 declined to accept the payment made by the petitioner herein and returned the demand draft, which was duly deposited by the petitioner herein, on the ground that the petitioner herein failed to deposit the same on 05.04.2023.

2.3 Mr. Chaudhari, learned advocate, submitted that though, the opposition application came to be accepted on 05.04.2023, the said demand draft came to be returned on 25.04.2023. The said notice of opposition is still on the portal however, the authorities are not inclined to consider the same.

3. Issue **Notice** making it returnable on **03.07.2023**.

4. By way of ad-interim relief, the implementation and operation of the trademark registration certificate issued by the respondent No.1 upon the trademark application No.5153323 filed by the respondent No.2 in class-44, be stayed till the next returnable date.

(VAIBHAVI D. NANAVATI,))

NEHA