



2025:DHC:7801-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 407/2025, CM APPL. 36781/2025 & CM APPL.
36783/2025

ASHIANA ISPAT LIMITEDAppellant
Through: Mr. Chander M. Lall, Sr. Adv.
with Mr. Ankur Sudan, Mr. Achuthan
Sreekumar, Ms. Anannya Mehan, Mr.
Swastik Bisarya and Ms. Vidhi Jain, Adv.

versus

KAMDHENU LIMITED & ORS.Respondents
Through: Mr. J Sai Deepak, Sr. Adv. with
Mr. Sudarshan Bansal, Mr. Shivang Bansal,
Mr. Avinash and Mr. Shivendra Pratap
Singh, Adv. for R-1
Ms. Nidhi Raman, CGSC with Mr. Akash
Mishra and Mr. Arnav Mittal, Adv. for R-2
Mr. Satya Ranjan Swain, SPC with Mr.
Kautilya Birat, Mr. Ankush Kapoor and Mr.
Vishwadeep Chandrakar, Adv. for R-2 to 5
Mr. Sumit Nagpal, Adv. for R-4
Ms. Kangan Roda, SPC Ms. Apoorva
Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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03.09.2025

C. HARI SHANKAR, J.

1. In view of the nature of the dispute, we deem it appropriate to commence this judgment by recounting the procedure for registration



of a trade mark, under the Trade Marks Act, 1999¹ read with the Trade Marks Rules, 2017².

2. Procedure for registration of a trade mark

2.1 Any application, seeking registration of a trade mark, is required to be submitted under Section 18(1)³ of the TMA, to the Registrar of Trade Marks. Section 18(4)⁴ empowers the Registrar to either refuse the application, or accept it, absolutely or conditionally. Section 19⁵ further empowers the Registrar, if he feels that the application ought not to have been accepted, or that it should have been accepted subject to conditions other than those subject to which it was accepted, to withdraw the acceptance. If the application is accepted, Section 20(1)⁶ requires the Registrar to advertise the application, along with the conditions, if any, subject to which it was

¹ “the TMA” hereinafter

² “the TMR” hereinafter

³ 18. **Application for registration.** –

(1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar in the prescribed manner for the registration of his trade mark.

⁴ (4) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

⁵ 19. **Withdrawal of acceptance.** – Where, after the acceptance of an application for registration of a trade mark but before its registration, the Registrar is satisfied—

(a) that the application has been accepted in error; or

(b) that in the circumstances of the case the trade mark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

⁶ 20. **Advertisement of application.** –

(1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner:

Provided that the Registrar may cause the application to be advertised before acceptance if it relates to a trade mark to which sub-section (1) of Section 9 and sub-sections (1) and (2) of Section 11 apply, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do.



accepted.⁷ Any person who seeks to oppose the registration of the trade mark may then, under Section 21(1)⁸, submit a notice of opposition, with the Registrar. The Registrar would, under Section 21(2)⁹, then serve a copy of the notice of opposition to the applicant seeking registration of the trade mark. The applicant is required, under the same sub-section, to submit a counter-statement, justifying the application and meeting the opposition. Failure, on the part of the applicant, to do so, would amount to abandonment of the application. Counter-statement, if filed, is required, by Section 21(3)¹⁰, to be served by the Registrar on the opponent. Section 21(5)¹¹ then empowers the Registrar to hear the parties, if required, consider the evidence cited by them and decide whether to register the mark and, if so, whether the registration should be conditional or unconditional. Section 23¹² finally requires the Registrar to register the mark, if it has

⁷ The proviso to Section 20(1) permits the Registrar to advertise the application before acceptance in certain exceptional cases. We are not concerned with a situation in which the proviso applies.

⁸ **21. Opposition to registration.** –

(1) Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration.

⁹ (2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

¹⁰ (3) If the applicant sends such counter statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

¹¹ (5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

¹² **23. Registration.** –

(1) Subject to the provisions of Section 19, when an application for registration of a trade mark has been accepted and either—

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the Central Government otherwise directs, register the said trade mark within eighteen months of the filing of the application and the trade mark when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of Section 154, be deemed to be the date of registration.

(2) On the registration of a trade mark, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry.



not been opposed within the time permissible, or if any opposition, so raised, has been decided in favour of the applicant.

2.2 The manner in which an application, seeking registration of a trade mark is required to be examined, is set out in Rule 33 of the TMR. Rule 33(1)¹³ requires the Registrar to cause the conducting of a search amongst earlier trademarks, which are either registered or in respect of which applications for registration are pending, to ascertain whether any such mark, or marks, are identical or deceptively similar to the trade mark of which registration is sought by the applicant. Rule 33(2)¹⁴ requires the Registrar, in the event of his having any objection to the application, or if he intends to accept the application subject to any conditions or limitations, to communicate the objection or proposal to the applicant in the form of a First Examination Report¹⁵. Rule 33(4)¹⁶ requires the applicant to respond to the FER within one month from the date of its receipt, failing which the Registrar is entitled to treat the application as abandoned. If the response is received within one month and found acceptable, the Registrar shall advertise the application under Section 20(1) of the TMA. If the

¹³ 33. **Examination, Objection to acceptance, hearing.** –

(1) The Registrar shall cause the application to be examined as per provisions of the Act, wherein a search shall also be conducted amongst the earlier trade marks, registered or applied for registration, for the purpose of ascertaining whether there are on record in respect of the same goods or services or similar goods or services any trade mark identical with or deceptively similar to the trade mark applied for. The Registrar may cause the re-examination of the application including research of earlier trade marks at any time before the acceptance of the application but shall not be bound to do so.

¹⁴ (2) If, on consideration of the application for registration of a trade mark and any evidence of use or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar has any objection to the acceptance of the application or proposes to accept it subject to such conditions, amendments, modifications or limitations as he may think fit to impose under sub-section (4) of Section 18, the Registrar shall communicate such objection or proposal in writing to the applicant in the form of an examination report.

¹⁵ "FER" hereinafter

¹⁶ (4) If, within one month from the date of receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.



response is not satisfactory, the Registrar is required, by Rule 33(5)¹⁷, to provide an opportunity of hearing to the applicant and, under Rule 33(8)¹⁸, to pass an appropriate order after hearing the applicant.

2.3 This is the statutorily envisaged protocol, contained in Chapter III of the TMA and Chapter II of the TMR, for registration of a trademark.

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3. Clearly, the TMA envisages any person, who desires to oppose the proposed registration of the trademark, to submit a notice of opposition, under Section 21(1), after the application is advertised under Section 20. In the present case, however, the respondent has, instead of submitting such an opposition, chosen to challenge the very advertisement of the appellant's application for registration of the trademark AL KAMDHENU GOLD, fundamentally on the ground that there are several registered trademarks of the respondent, to which the proposed AL KAMDHENU GOLD mark of the appellant would be confusingly similar, which have not been cited by the Registrar while advertising the mark.

4. The dispute relates to five applications submitted by the appellant with the Registrar, under Section 18(1), for registration of

¹⁷ (5) In case the response to the examination report is received within the aforesaid time, the same shall be duly considered and if the Registrar accepts the application for registration, he shall communicate such acceptance to the applicant and cause the application to be advertised as accepted under sub-section (1) of Section 20.

¹⁸ (8) Where the applicant has submitted his reply to the examination report within the aforesaid period or has appeared in the hearing and made his submissions, the Registrar shall pass an appropriate order.



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the trademark AL KAMDHENU GOLD. Three of the five applications were advertised by the Registrar, without any conditions. In respect of the remaining two applications, the Registrar issued a FER in which some of the marks of the respondent were cited but certain other marks which, according to Mr. J. Sai Deepak, learned Senior Counsel for the respondent, were also rival marks to which the proposed AL KAMDHENU GOLD mark was confusingly similar, were not cited. The appellant filed its response to the FER in the cases in which the FER had been issued. Among the objections that the appellant took was the plea that the respondent could not oppose the registration of the appellant's mark because of a contractual relationship between them.

5. The respondent instituted five writ petitions, from which the present appeal emanates, challenging the decision of the Registrar to advertise the applications of the appellant for registration of the trademark AL KAMDHENU GOLD without, in the FER, citing the allegedly confusingly similar trademarks of the respondent, which already stand registered with the Registrar prior in point of time. By the impugned judgment, the learned Single Judge has allowed all five writ petitions, without issuing formal notice to the appellant and without calling upon the appellant to file any counter-affidavit by way of response to the writ petitions. Notice was issued only to the Union of India, through the office of the Registrar and, on the basis of the counter-affidavit filed by the Registrar, the learned Single Judge has remanded all five applications filed by the appellant for *de novo* adjudication by the Registrar in accordance with law.



6. Aggrieved thereby, the appellant, who was Respondent 4 in each of the writ petitions, has filed the present Letters Patent Appeal.

The Impugned Judgment

7. We deem it appropriate to reproduce the impugned judgment of the learned Single Judge in its entirety:

“It is the duty of a High Court to set the 'wrong' right and to not let the same perpetrate any further. That is the reason that the Legislature has provided for the provision qua invocation of extraordinary jurisdiction by a High Court under Article 226¹⁹ of the Constitution of India. Tough situations demand exercising of tough measures and sometimes recourse to appropriate remedies under Article 226 of the Constitution of India is the only way out. Present proceedings (a batch of five writ petitions) is/ are one such glaring example of a peculiar situation regarding the manner of working by the Trade Marks Registry in general which also included the five trademark applications involved herein.

2. The preface thereof is already laid out in the earlier order dated 09.05.2025, when the proceedings were listed before this Court for the first time. Relevant extract thereof is reproduced as under:-

"4. Learned counsel appearing for the respondent nos.2 and 3 despite repeated queries, have failed to revert with any answers since they are yet to receive instructions.

5. Prima facie, this Court finds something not in order, more so, since it is but strange that the part of the records maintained and available with the respondents are not being shown. There is something amiss.

¹⁹ 226. **Power of High Courts to issue certain writs.** –

(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.



6. Accordingly, considering the factual matrix involved, particularly, since as many as 16 trademarks duly registered and subsisting in the name of the petitioner are (not) finding mention in the accompanying Search Report sent along with the ER, it is deemed appropriate to call either of the Examination Officer, namely, Mr. Nehul Kumar or Mr. Rahul Kumar, who have issued the respective ER involved in the writ petitions, to remain physically present in this Court alongwith the appropriate hand held device in the form a laptop, I-pad or any other similar instrument on 15.05.2025 at 02:30 P.M. for assisting this Court for getting a clear picture qua the software being used by the respondent nos.1 and 2 at the time of preparing the Search Report.

7. This Court also deems it appropriate to also call upon the Registrar of Trademarks to join virtually on 15.05.2025 at 02:30 P.M. as well."

3. The same is also evident from the order dated 15.05.2025, when the proceedings were listed before this Court again on 15.05.2025. Relevant extract thereof is reproduced as under:-

"1. Mr. Unnat Pandit, Controller General of Patents, Design and Trademark, has joined through video conferencing and Mr. Mehul Kumar, Examiner, is also present in person in compliance of the last order.

2. The office the Trade Mark Registry has shared the screen with this Court, wherein the whole process of issuance of examination report as also the search conducted thereafter for issuance of the search report has been demonstrated.

3. This Court appreciates the co-operation extended by both Mr. Unnat Pandit, Controller General of Patents, Design and Trademark as also Mr. Mehul Kumar, Examiner.

4. After some time, learned counsel for the respondent nos.1, 2 and 3 seek, and are granted, one week for obtaining instructions qua the trademark applications in issue in the present petitions(s). Further, if they so desire, they shall be free to file an affidavit qua the issue at hand within the aforesaid period of one week as well."

4. Both the aforesaid orders dated 09.05.2025 and 15.05.2025



reflect that there were indeed some omissions on the part of the respondent nos.1 to 3 in these petitions. In fact, in response thereto, though there was no specific order for the respondent nos.1 to 3 for filing an affidavit, however, they filed a short affidavit wherein they have themselves categorically stated as under:-

"5. THAT it is respectfully submitted that the Respondent No.3 (Trademark Registry) is willing to withdraw acceptance of the trademark Application number 6845025 in exercise of the powers conferred under section 19 of the Trademark Act, 1999, and shall examine the application afresh, on merits, in accordance with the provisions of the Trade Marks Act and rules framed thereunder.

6. THAT the Respondent No.3 (Registrar of Trademark) had appeared before the Hon'ble Court on 15.05.2025 pursuant to the Order dt. 09.05.2025 wherein the Hon'ble Court Observed that" Prima facie, this Court finds something not in order, more so, since it is but strange that the part of the records maintained and available with the respondents are not being shown. There is something amiss" Hence pursuant to the hearing dated 15.05.2025 the Registrar of Trademarks has initiated appropriate administrative action against Mr. Mehul Kumar, Examiner of Trade Marks, and Mr. Rahul Kumar, Senior Examiner of Trade Marks in accordance with the applicable service rules and procedures.

7. THAT in light of the foregoing, Respondent Nos. 1 to 3 most respectfully submit that the aforementioned submissions may kindly be considered by this Hon'ble Court while adjudicating the present Petition."

5. Before proceeding further, at the outset, this Court applauds the alacrity shown by the respondent nos.1 to 3 in initiating timely action at their end to put their house back in order at the earliest and in the best possible manner. But, at the same time, for conserving the multiplicity of litigation, it is felt appropriate, fit and proper if this Court *suo moto* in exercise of its power under Article 226 of the Constitution of India take steps which are in overall interest of the general public including that of the petitioner and the respondent no.4 herein.

6. Though, no doubt it was open to the petitioner to have



availed any of the other statutory remedies as available to it in accordance in law instead of filing the present writ petitions, however, without advertent to the same and considering the factual matrix involved, the nature of the grievances raised and the type of reliefs sought by the petitioner in the present proceedings and in furtherance of the earlier two orders dated 09.05.2025 and 15.05.2025 passed by this Court as also taking into consideration the averments made by the respondent nos.1 to 3 in the short affidavit filed on their behalf, wherein it is specifically stated that appropriate action has been initiated against the Examiners involved, this Court felt it appropriate, fit and proper to proceed with passing appropriate orders without advertent to the merits involved herein or even issuing notice therein by suo moto exercising its extra-ordinary, inherent jurisdiction under Article 226 of the Constitution of India.

7. This was, more so, since the facts of these proceedings were relating to petitioner having raised questions qua the entire Examination followed by the Registrar and its officers and also the acceptance of the five trademark applications i.e. application no.6890699 in W.P.(C)-IPD 29/2025, application no.6845025 in W.P.(C)-IPD 30/2025, application no.6845771 in W.P.(C)-IPD 31/2025, application no.6890704 in W.P.(C)- IPD 32/2025 and application no.6742246 in W.P.(C)-IPD 33/2025; and that the Registrar having conducted the proceedings in dereliction of his statutory duties in complete disregard of law specifically, Rule 33 of the Trademark Rules and Section 11²⁰ of the Trademarks Act, 1999 as also various dictums of this Court.

8. In view of the aforesaid, since there is an apparent gross abuse of jurisdiction by the Trade Marks Registry, which is subordinate to this Court, in the considered opinion of this Court, these are fit cases for this Court to *suo moto* invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Furthermore, it is a settled law that entertainment of such writ petitions under Article 226 of the Constitution of India, even when an efficacious alternative remedy is available, is a self-imposed limitation, a rule of policy, convenience and discretion than a rule of law and there is no statutory absolute bar for this Court to proceed with the hearing

²⁰ 11. **Relative grounds for refusal of registration.** –

- (1) Save as provided in Section 12, a trade mark shall not be registered if, because of—
- (a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
 - (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,
- there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.



thereof. Reliance is placed upon the dictum of the Hon'ble Supreme Court in ***Commissioner of Income Tax & Ors. v Chhabil Das Agarwal***²¹, wherein it has been held as under:-

"11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See *State of U.P. v Mohd. Nooh*²², *Titaghur Paper Mills Co. Ltd. v State of Orissa*²³, *Harbanslal Sahnia v Indian Oil Corpn. Ltd.*²⁴ and *State of H.P. v Gujarat Ambuja Cement Ltd.*²⁵)"

9. Reliance is also placed upon ***State of H.P. & Ors. v Gujarat Ambuja Cement Ltd. & Anr***, wherein it has been held as under:-

"17. We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative

²¹ (2014) 1 SCC 603

²² AIR 1958 SC 86

²³ (1983) 2 SCC 433

²⁴ (2003) 2 SCC 107

²⁵ (2005) 6 SCC 499



remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

10. As such, in view of the above and under the facts and circumstances involved, this Court is of the considered opinion that it can exercise jurisdiction under Article 226 of the Constitution of India even when an alternative remedy is available. More so, since the present proceedings are such, particularly, whence they were warranting interference by this Court to suo moto exercise its extraordinary jurisdiction Article 226 of the Constitution of India to meet the ends of justice, whence they are being done to bring the house of Trade Mark Registry in order, so that faith of the general public in the governmental institutions/ Courts/ Tribunals/ Judicial/ Quasi-Judicial, is restored not lost. This will not be possible if this Court does not exercise its extra-ordinary jurisdiction.

11. As such, cumulatively taking all the aforesaid factors, the nature of the proceedings involved, the acts of the Trade Marks Registry particularly in view of the contents of the short affidavit filed by the respondent nos.1 to 3, as also in the interest of justice, it is deemed appropriate, fit and proper to remand the fate of all the five trademark application no.6890699 in W.P.(C)-IPD 29/2025, trademark application no.6845025 in W.P.(C)-IPD 30/2025, trademark application no.6845771 in W.P.(C)-IPD 31/2025, trademark application no.6890704 in W.P.(C)- IPD 32/2025 and trademark application no.6742246 in W.P.(C)-IPD 33/2025 for de novo adjudication in accordance with law by the Registrar of Trade Marks, without issuance of any notice in the present writ petitions.

12. *At this stage, this Court adverts to hear the learned senior counsel for respondent No.4 at length, since he primarily objected to passing the aforesaid order qua de novo adjudication of the impugned applications in accordance with law by the Registrar of Trade Marks without issuance of notice and/ or hearing him on maintainability/ merits of the present petition(s) because the said respondent No.4 is an affected party and because it virtually tantamount to allowing of the present petitions.*

13. Thence, relying upon ***Kaira District Cooperative Milk Producers Union Ltd. & Anr. v Registrar of Trademarks & Ors.***²⁶, (paragraphs 11 and 23) wherein a Co-ordinate Bench of this Court has gone into the aspect of Section 21 of the Act as also the

²⁶ 2023 SCC OnLine Del 1730



justification of the scheme of the Act and the Rules, learned senior counsel for respondent no. 4 submits that this Court ought not proceed to pass the said order. Further relying upon **T.K. Lathika v Seth Karsandas Jamnadas**²⁷, wherein the Hon'ble Supreme Court has laid down the contours as to when the Court should enter into the merits of the proceedings involved, particularly, qua the maintainability of a petition is in question, learned senior counsel reaffirms that this Court is not competent to pass such an order of remand.

14. In rebuttal, relying upon **Jai Bhagwan Gupta v Registrar of Trade Marks & Ors.**²⁸, the learned senior counsel for petitioner submits that a Co-Ordinate Bench of this Court, under similar kind of circumstances involving the Trade Marks Registry, has held that a specific order has to be passed by the Registrar as to the reason why the mark is being accepted and there has to be a clear application of mind by the Registrar under Section 20(1) of the Act, which should not be a mere formality. The aforesaid is missing in the proceedings before the Trade Marks Registry.

15. Further, learned senior counsel for petitioner relying upon **Kaira District Cooperative Milk Producers Union Ltd. & Anr. v D. N. Bahri Trading**²⁹, submits that a Co-Ordinate Bench of this Court under similar kind of circumstances involving Rule 33 of the Rules has held that compliance of Rule 33 of the Rules is mandatory.

16. In rejoinder arguments, learned senior counsel for respondent no.4 distinguished **Jai Bhagwan Gupta (Supra)** by submitting that although similar reliefs, as sought by the petitioner herein, were sought therein also, the said writ petition was disposed of only with the direction for the opposition proceedings to be decided as expeditiously as possible as also the right to oppose the said advertised mark was kept open and it was ordered to be decided in accordance with law. Qua **Kaira District Cooperative Milk Producers Union Ltd. & Anr. v D. N. Bahri Trading (supra)**, learned senior counsel submits that the said case was of a rectification petition and was not a writ petition and thus is not applicable to the facts of the present case.

17. *Be that as it may, this Court once again reiterates that since the present petitions involve peculiar, strange and exceptional circumstances, they call for orders passed suo moto by invoking the extra-ordinary jurisdiction under Article 226 of the*

²⁷ (1999) 6 SCC 632

²⁸ (2020) 82 PTC 240

²⁹ 2024 SCC OnLine Del 2550



Constitution of India. Reliance is once again placed upon the earlier orders dated 09.05.2025 and 15.05.2025 passed by this Court as also the resultant short affidavit filed by the respondent nos.1 to 3 wherein, it is specifically stated that appropriate action have been initiated against the Examiners involved.

18. Qua the two judgments cited by learned senior counsel for the respondent no.4, this Court finds that the underlying common thread running through them are that *notice(s) had already been issued in both of them and the Court(s) were not exercising extraordinary jurisdiction under Article 226 of the Constitution of India.* Moreover, in ***Kaira District Cooperative Milk Producers Union Ltd. & Anr. v Registrar of Trademarks & Ors. (supra)*** the opposition proceedings were already filed and pending before the Trade Marks Registry and the learned Single Judge deemed it appropriate not to entertain the petition as parallel proceedings and adjudicate the grievance of the petitioner therein.

19. In any event, in the present peculiar factual circumstances, *the petitioner has approached this Court under Article 226 and Article 227 of the Constitution of India without/ before filing any opposition proceedings to any of the five trademark applications and/ or even when the mandatory period for filing the same still available to the petitioner.*

20. In view of the aforesaid discussions, this Court sees no reason and/ or impediment for this Court to *suo motu* exercise of its inherent jurisdiction under Article 226 of the Constitution of India for setting a 'wrong' right in the public good.

21. In view of the aforesaid, the writ petitions are disposed of remanding all the five trademark applications i.e. application no.6890699 in W.P.(C)-IPD 29/2025, application no.6845025 in W.P.(C)-IPD 30/2025, application no.6845771 in W.P.(C)-IPD 31/2025, application no.6890704 in W.P.(C)-IPD 32/2025 and application no.6742246 in W.P.(C)-IPD 33/2025 for de novo adjudication by the Registrar of Trade Marks in accordance with law.”

(Emphasis supplied)

Rival Contentions

8. Mr. Chander M. Lall, learned Senior Counsel for the appellant



submits that

- (i) the writ petitions were not maintainable,
- (ii) the learned Single Judge could not have effectively allowed the writ petitions without even affording the appellant an opportunity to file a counter-affidavit, and
- (iii) the writ petitions ought not to have been entertained by the learned Single Judge in the face of the availability, to the respondent, of an equally efficacious alternate remedy by way of opposition under Section 21 of the TMA.

9. Mr. Sai Deepak contends, *per contra*, that

- (i) the writ petitions were maintainable,
- (ii) the plea that no formal notice, calling upon the appellant to file counter-affidavits to the writ petitions had been issued and no opportunity had, therefore, been granted to them to do so, was without merit, as they were present on all dates of hearing and were given adequate opportunity to advance submissions, and
- (iii) the learned Single Judge had rightly entertained them in exercise of *suo motu* jurisdiction under Article 226 of the Constitution of India, which was absolute in nature and on which there could be no fetters.

Our Decision

10. We disagree with Mr. Lall regarding submission (i), we agree with him regarding submission (ii) and we do not intend to return any



finding on submission (iii), as we deem it appropriate to direct the learned Single Judge to examine the issue afresh, after providing an opportunity to the appellant in the terms that we propose to set out.

Our Reasons

11. Re. maintainability of the writ petitions

11.1 There is a well-recognised distinction between the maintainability, and the entertainability, of a writ petition. The maintainability of a writ petition is to be decided solely by reference to Article 226 of the Constitution of India, where the writ petition is filed in the High Court. If the petition does not conform to the requirements of Article 226, it is not maintainable, and matters must rest there. If, however, the writ petition conforms to the requirements of Article 226, it is maintainable.

11.2 The jurisdiction conferred by Article 226 is, however, extraordinary in nature. It is open to a Court, even in a case in which a writ petition is maintainable, to refuse to entertain the writ petition. That refusal, however, has to be on cogent and well-established principles. The most often cited instances, in which a Court may refuse to entertain a writ petition even though it is maintainable, are where there is an equally efficacious alternate remedy available to the petitioner, or where the writ petition involves disputed issues of fact, as may necessitate a trial and appreciation of evidence. Neither of these, however, operates as an absolute bar to entertainment of a writ



petition. In an appropriate case, a Court may entertain a writ petition even if there is an equally efficacious alternate remedy available, or even if the writ petition raises disputed issues of fact.

11.3 Thus, on the aspect of maintainability of a writ petition, no discretion vests with the Court. A writ petition is either maintainable, or not maintainable, depending on whether it conforms, or does not conform, to Article 226. If the writ petition conforms to Article 226, the Court cannot hold that it is not maintainable.

11.4 As against this, the decision on whether to entertain, or not to entertain, the writ petition, is entirely within the discretion of the Court.

11.5 Exercise of original jurisdiction by a Court may either be ordinary, or extraordinary.

11.6 Ordinary jurisdiction is exercised by the Court most often while entertaining civil suits and other civil disputes, filed under specific provisions available for the said purpose. There is, ordinarily, no discretion vested with the court, insofar as exercise of its ordinary original jurisdiction is concerned. A party which approaches the Court in a suit, which lies in law, cannot be non-suited, as exercise of ordinary original jurisdiction by the Court is not subjected to the fetters which attach to exercise of extraordinary original jurisdiction.

11.7 Exercise of extraordinary original jurisdiction, which is what



the Court exercises under Article 226 is, however, a matter of discretion. The Court may, for cogent reasons already noted earlier, decline to exercise extraordinary jurisdiction under Article 226, and may relegate the party to other remedies. The only circumstance in which the Court cannot refuse to entertain a writ petition is where the petition conforms to Article 226 and is therefore maintainable, *and where the party has no other remedy available*. No litigant can be left remediless. In all other cases, exercise of Article 226 jurisdiction is extraordinary and, therefore, is subject to the discretion of the Court concerned.

11.8 The Supreme Court has, in the following paras from *Godrej Sara Lee Ltd v Excise and Taxation Officer*³⁰, clearly outlined a distinction between maintainability and entertainability of a writ petition:

“3. It appears on a perusal of the order under challenge in this appeal that the appellant had questioned the jurisdiction of the Deputy Excise and Taxation Commissioner (ST)-cum-Revisional Authority, Kurukshetra (hereafter "the revisional authority", for short) to reopen proceedings, in exercise of suo motu revisional power conferred by section 34 of the VAT Act, and to pass final orders holding that the two assessment orders, both dated February 28, 2007 passed by the ETO-cum-Assessing Authority, Kurukshetra (hereafter "the assessing authority", for short) for the assessment years 2003-04 and 2004-05 suffered from illegality and impropriety as delineated therein, viz., that the assessing authority erred in levying tax on mosquito repellent (a product manufactured by the appellant) at four per cent. instead of ten per cent. Keeping in view the objection raised by counsel for the respondents that without exhausting the remedy of appeal provided by section 33 of the VAT Act "it would not be permissible to entertain this petition" and upon consideration of the decision of this court reported in

³⁰ AIR 2023 SC 781



(1975) 2 SCC 436³¹ based on which it was contended on their behalf that where any right or liberty arises under a particular Act then the remedy available under that Act has to be availed, the High Court was of the opinion that there can be no presumption that the appellate authority would not be able to grant relief sought in the writ petition ; hence, the writ petition was dismissed and the appellants were relegated to the appellate remedy.

4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The

³¹ Titagarh Paper Mills v Orissa State Electricity Board



fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in **1958 SCR 595**³² had the occasion to observe as follows :

"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. . ."

6. At the end of the last century, this court in paragraph 15 of its decision reported in **(1998) 8 SCC 1**³³ carved out the exceptions on the existence whereof a writ court would be justified in

³² State of Uttar Pradesh v Mohammad Nooh

³³ Whirlpool Corporation v Registrar of Trade Marks, Mumbai



entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under :

- (i) where the writ petition seeks enforcement of any of the fundamental rights ;
- (ii) where there is violation of principles of natural justice ;
- (iii) where the order or the proceedings are wholly without jurisdiction ; or
- (iv) where the vires of an Act is challenged.

7. Not too long ago, this court in its decision reported in **2021 SCC Online SC 884**³⁴ has reiterated the same principles in paragraph 11.”

11.9 Viewed thus, it is clear that the writ petitions filed by the respondent were maintainable. The guiding principle – in fact, one may almost call it the “golden test” – in this regard is, in our view, that postulated in para 4 of *Godrej Sara Lee*, in the words: “The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, *the courts would be rendered incapable of even receiving the lis for adjudication.*” Thus, a sustainable objection to maintainability must be one which deserves acceptance *and denudes the Court of jurisdiction altogether*, even to *receive* the matter. In other words, the *lis* must be one of which Article 226 does not even *permit* adjudication. Expressed otherwise, the petition must not be *amenable to adjudication* under Article 226. Then, and then alone, would the writ petition *not be maintainable*.

11.10 There can be no manner of doubt that the exercise of examination of an application for registration of a trade mark, issuance of FER if deemed appropriate, the response thereto, the consideration

³⁴ Assistant Commissioner of State Tax v Commercial Steel Limited



thereof and passing of final orders after hearing the applicant is an exhaustive and detailed exercise, as envisaged in Rule 33 of the TMR. Failure, on the part of the Registrar, to diligently comply with the said procedure, is certainly actionable. Rule 33(1) specifically requires the Registrar to search among the existing registered trade marks, or trade marks in respect of which applications for registration are pending, as to whether there are any trade marks which are deceptively similar to, or identical with, the mark of which the applicant seeks registration. If there are, it is the statutory duty of the Registrar to require the applicant, in the FER which the Registrar would issue, to satisfy the Registrar that the trade mark forming subject matter of the application nonetheless merits registration, despite the existing trade marks that the Registrar chooses to cite. Needless to say, it shall be open to the applicant, in such circumstances, to satisfy the Registrar that the mark of which the applicant seeks registration is not identical or deceptively similar to any of the cited marks.

11.11 It is, therefore, the bounden duty of the Registrar to confront the applicant seeking registration of a trade mark with all other trade marks, earlier registered or in respect of which applications for registration are pending, which, in the perception of the Registrar, are identical or deceptively similar to the trade mark of which the applicant seeks registration. Equally, it would be the entitlement of the proprietor of any such deceptively similar, or identical, trademark, registered prior in point of time or in respect of which an application for registration is pending, to have its mark cited by the Registrar as a rival mark. This is a valuable right, as a proprietor of a registered trade



mark is entitled to every opportunity to protect his intellectual property. If, therefore, the Registrar is remiss in his responsibility to cite, by way of FER issued to the applicant, the identical or deceptively similar marks which are already on the register, or of which applications for registration are pending, the proprietor of such registered trade marks, or the applicant of an application seeking registration of such an identical or similar trade mark, would be within his right to question the action of the Registrar as not having been undertaken in accordance with Rule 33 of the TMR read with Section 20 of the TMA.

11.12 There is no constitutional embargo which prevents, or proscribes, this challenge from being ventilated by way of a writ petition under Article 226 of the Constitution.

11.13 Article 226(1) is couched in very wide terms. It empowers the High Court to issue directions, orders or writs, for any purpose, to any authority within its territorial jurisdiction. If one is to read Article 226(1) in absolute terms, there is practically no order which cannot be issued by the High Court thereunder. The High Court is empowered, under the provision, not only to issue writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, but any other direction, order or writ, as is apparent from the use of the word “including”, preceding the words “writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them”. The writ, order or direction can be issued “to any person or authority, including in appropriate cases, any Government”. Thus, the



power to issue writs is not restricted only to the Government or governmental authorities. It extends to “any person or authority”. Again, the writ can issue not just for enforcement of fundamental rights, but for “any other purpose”.

11.14 It is apparent, therefore, that the framers of the Constitution, as it stands amended to date, have conferred, on High Courts, practically unbridled power to issue writs under Article 226 of the Constitution of India. The sweep of Article 226, which may otherwise be completely unbridled has, however, by various judicial authorities delivered from time to time, been subjected to reasonable checks and balances. Thus, writ jurisdiction is not to be exercised to substitute the view of the High Court to a plausible view taken by the authorities below³⁵, or, ordinarily, where an equally efficacious alternate remedy is available to the petitioner³⁶, or in such a way as would amount to the High Court sitting in appeal over the decision of the authorities below³⁷, or against a purely private body which does not discharge any public function³⁸, or where, even if the private body is discharging a public function, the petitioner does not seek enforcement of that public function, such as a challenge to termination of an employee by a private school³⁹, or seeking a mandamus to the State in respect of a purely private property dispute⁴⁰. It is neither possible nor advisable to delineate, exhaustively, all circumstances in which the power under

³⁵ Refer **W.B. Central School Service Commission v Abdul Halim**, (2019) 18 SCC 39

³⁶ Refer **United Bank of India v Satyawati Tandon**, (2010) 8 SCC 110

³⁷ Refer **P. Kasilingam v P.S.G. College of Technology**, (1981) 1 SCC 405; **Electrical Rengali Hydro Electric Project v Giridhari Sahu**, (2019) 10 SCC 695

³⁸ Refer **Rajbir Surajbhan Singh v Institute of Banking Personnel Selection**, (2019) 14 SCC 189; **Ramakrishna Mission v Kago Kunya**, (2019) 16 SCC 303

³⁹ Refer **Trigun Chand Thakur v State of Bihar**, (2019) 7 SCC 513

⁴⁰ Refer **N. Sankaranarayanan v T.N. Housing Board**, (2020) 14 SCC 457



Article 226 should be exercised, or should not be exercised, but it would, to our mind, be advisable for the Court, approached under Article 226, to remain conscious of the fact that it is exercising *extraordinary*, and not ordinary, jurisdiction.

11.15 We are, therefore, of the view that it cannot be said that the writ petitions filed by the respondent were not maintainable. If the respondent's marks were actually identical, or deceptively similar to, the mark of which the appellant seeks registration, and if they were not cited as rival marks in the FER issued by the Registrar, or if the appellant's marks were allowed to proceed to advertisement without any FER, as the respondent would allege, the action would become vulnerable to challenge and, therefore, the writ petitions filed by the respondent would be maintainable.

11.16 We are in agreement with Mr. Sai Deepak that the advertisement of the application by the Registrar of Trademarks is not a purely ministerial act. The Registrar is required to apply his mind as to whether any rival marks are in existence and to issue an appropriate FER in a case where such rival marks exist before advertising the application. *The decision to advertise the application is, therefore, in our view, a decision against which a writ petition under Article 226 of the Constitution is maintainable.*

11.17 The submission of Mr. Lall that the writ petitions filed by the respondent were not maintainable is, therefore, rejected.



12. Re. Objection regarding failure of opportunity to appellant to file its counter-affidavit

12.1 The learned Single Judge has proceeded to allow the writ petition filed by the respondent without issuance of a formal notice to the appellant. It has been pointed out to us that the appellant was in fact present on the various dates when the matter was listed before the learned Single Judge. Mr. Sai Deepak, learned Senior Counsel for the respondent also endeavoured to submit that the appellant's arguments were heard by the learned Single Judge on the date when the impugned order came to be passed.

12.2 We are unimpressed with these submissions. In our view, the final order that the learned Single Judge came to pass, which was to set the prosecution of the applications of the appellant back to the initial stage could not have been passed without permitting the appellant to file a counter-affidavit by way of a response to the writ petition, especially as a specific objection to this effect has been taken by the appellant, and recorded in the impugned judgment. Though the learned Single Judge is, while passing the impugned order, clearly seriously concerned about the manner in which application seeking registration of trademarks are being dealt with in the office of the Registrar, that, in our view, would not justify the learned Single Judge relegating the applications of the appellant to stage one, as it were, without allowing the appellant an opportunity to file a response to the writ petition. No irreparable or serious prejudice would have ensued, if the appellant was to be allowed an opportunity to file a response to the writ petition.



12.3 A chance to respond, on affidavit and on oath, to the averments in the writ petition, is not an empty formality. An audience before the Judge, or even an opportunity to address arguments, is not a substitute for an opportunity to place one's stand on affidavit. The sanctity of pleadings is *sui generis*, and cannot be compromised.

12.4 There may, of course, be cases in which the situation is so emergent, and the likelihood of irreparable damage so imminent that, even without notice to the respondent, the writ petition may have to be allowed. One may also hypothetically conceive of situations in which, if he is placed on notice, a respondent in a writ petition may irreparably prejudice the proceedings. The present case is, however, not one such. The appellant's applications had merely been advertised. Even if the learned Single Judge were of the opinion that they ought not to be allowed to proceed further, he could have put an interlocutory injunction in place, and proceeded to decide the matter after allowing the appellant an opportunity to respond.

12.5 We, therefore, are of the opinion that the writ petitions deserve to be remanded to the learned Single Judge for decision afresh. We have clarified that the writ petitions were maintainable; ergo, the learned Single Judge would be possessed of the jurisdiction to deal with the matter.

13. Re. plea of alternative remedy



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13.1 Whether the writ petitions ought, or ought not, to be *entertained* is, however, an altogether different matter. It is open to the Court, before whom such a writ petition is brought, to hold that the petitioner had equally efficacious alternate avenues of remedy available and on that ground, or on any other ground, refuse to entertain the writ petition.

13.2 Though it is true that the learned Single Judge has opined that the writ petitions were maintainable despite the availability of an alternative remedy, we are of the view that the reasons adduced in that regard are insufficient. The observations of the learned Single Judge, on the aspect of whether the writ petitions were deserving of being entertained despite the availability of a remedy of filing opposition to the applications, in terms of Section 21 of the Trade Marks Act, are contained in paras 6, 8 and 10 of the impugned judgment. These paras already stand reproduced earlier. However, the factors which have been cited by the learned Single Judge, in these paras, to justify entertainment of the writ petitions despite the availability of remedy under Section 21 may briefly be noted. The learned Single Judge observes that “considering the factual matrix involved, the nature of the grievances raised and the types of reliefs sought by the petitioner in the present proceedings... as also taking into consideration the averments made by the respondent nos. 1 to 3 in the short affidavit filed on their behalf, wherein it is specifically stated that appropriate action has been initiated against the Examiners involved”, the Court deemed it “appropriate, fit and proper” to proceed to pass appropriate orders “without adverting to the merits involved or even issuing notice



... by *suo motu* exercising its extraordinary, inherent jurisdiction under Article 226 of the Constitution of India”. This, it is observed, was “more so, since... the petitioner (hand) raised questions qua the entire Examination followed by the Registrar and its officers and also the acceptance of the 5 trademark applications...; and that the Registrar having conducted the proceedings in dereliction of his statutory duties in complete disregard of law specifically, Rule 33 of the Trademark Rules and Section 11 of the Trade Marks Act, 1999 as also various dictums of this Court”. Para 8 goes on to observe that, as there was “an apparent gross abuse of jurisdiction by the Trade Marks Registry ... these are fit cases for this Court to *suo moto* invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India”.

13.3 The considerations outlined in paras 6, 8 and 10 of the impugned judgment and attempted to be captured in para 13.2 supra, in our view, do not make out a case for bypassing the alternate remedy available in Section 21 of the Trade Marks Act and for directly entertaining a writ petition. The learned Single Judge is obviously deeply concerned about the manner in which the Trade Marks Registry is functioning. At various points, the learned Single Judge claims to be exercising *suo motu* jurisdiction. With great respect to the learned Single Judge, we are of the opinion that the jurisdiction exercised by the learned Single Judge cannot be regarded as *suo motu*. *Suo motu* action is that taken by a Court of its own accord, not at the request of any party. Inasmuch as the impugned order has been passed on writ petitions filed by the respondent, it cannot be said to have been



passed in exercise of *suo motu* jurisdiction.

13.4 It remains, further, arguable whether, given the established roster of this Court, the learned Single Judge could have exercised *suo motu* jurisdiction, as that would then partake of the nature of public interest litigation. We do not, however, propose to enter into that arena as, in our opinion, the jurisdiction exercised by the learned Single Judge, while passing the impugned judgment, cannot be regarded as having been exercised *suo motu*.

13.5 The reliance, by the learned Single Judge, on the affidavit filed by the office of the Registrar of Trade Marks cannot, in our view, justify jettisoning the requirement of grant of an opportunity to the appellant to respond to the writ petition. After all, the party who was affected by the reliefs sought in the writ petition was not the Registrar, but the appellant, the prosecution of whose applications were subject matter of challenge. In fact, we are of the opinion that it was incumbent on the learned Single Judge to, on the very first date of effective hearing, issue notice to the appellant.

13.6 No examination of merits

13.6.1 There is another obvious error in the matter in which the learned Single Judge has dealt with the matter. *There is no finding in the impugned order, even prima facie, that the marks of the respondent were identical or deceptively similar to the AL KAMDHENU GOLD mark of which the appellant sought registration.*



Without examining this, we are of the opinion that the learned Single Judge could not have arrived at a finding that, in issuing the FER in two cases without mentioning the marks of the respondent, or in failing to issue the FER in the other three cases, the office of the Registrar had been remiss. In fact, this aspect is as much as acknowledged in para 6 of the impugned judgment, in which the learned Single Judge observes that he was exercising jurisdiction without going into the merits of the matter.

13.6.2 Mr. Lall submits, and we agree with him, that, without advertent to the merits of the matter, the learned Single Judge could not have arrived even at a *prima facie* finding that the appellant's marks were deceptively similar to those of the respondent, so that the Registrar could be said to have erred in not including them in the FER issued to the appellant. The undertaking, by the Registrar, to withdraw the acceptance of the applications of the appellant, quite obviously, could not be in any way even determinative, much less, dispositive, of the issue.

13.6.3 This aspect is also, to our mind, relevant, while deciding whether the writ petitions deserved to be entertained.

13.7 We, however, do not propose to finally pronounce on the entertainability of the writ petitions filed by the respondent. As we are, in any event, directing that an opportunity be granted to the appellant to file a counter-affidavit, we permit the appellant to raise an objection in that regard, if it so chooses, in the counter-affidavit, and the



respondent to justify the invocation of Article 226 of the Constitution of India despite the availability of the remedy of opposition under Section 21 of the TMA, in its rejoinder. We request the learned Single Judge, in the *de novo* proceedings, to examine the aspect of entertainability of the writ petitions afresh.

Conclusion

14. Following the aforesaid discussion, without entertaining into any other aspect of the matter, we dispose of this appeal in the following terms:

- (i) The impugned judgment dated 28 May 2025 is quashed and set aside.
- (ii) We hold that the writ petitions filed by the respondent were maintainable.
- (iii) We, however, do not express any opinion on whether the writ petitions ought, or ought not, to be entertained by the learned Single Judge. We leave this aspect open for consideration afresh. The appellant shall be at liberty to raise all submissions in opposition to the entertainability of the writ petition before the learned Single Judge and the respondent would also be at liberty to submit likewise by way of response. The issue of whether the writ petition should be entertained is, therefore, left open to be decided by the learned Single Judge.



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(iv) Formal notice of the writ petition shall be deemed to have been issued to the appellant. The appellant is directed to file a counter-affidavit by way of response to the writ petition within a period of two weeks. Rejoinder thereto may be filed within two weeks thereof.

(v) The writ petition shall stand restored to the file of the learned Single Judge.

(vi) Both parties are directed to appear before the learned Single Judge on 14 October 2025.

15. All other issues of fact or law shall remain open to be urged before the learned Single Judge.

16. Mr. Lall also raises an objection regarding territorial jurisdiction as one of the applications under challenge was filed before the Ahmedabad office of the Registrar of Trade Marks. This aspect shall also be open to be taken up before the learned Single Judge.

17. Mr. Sai Deepak prays that the respondent's right to file opposition by way of response to the appellant's trademark application should be left open. We are expressing no view in the matter. It shall be open to the parties to urge this aspect before the learned Single Judge and to seek liberty as sought before us from the learned Single Judge. The learned Single Judge would take a call on the request, if



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made.

18. The appeal stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 3, 2025/AR