

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

Before:

**The Hon'ble Justice Arijit Banerjee
And
The Hon'ble Justice Om Narayan Rai**

TEMPAPO – IPD 5 of 2025

IA No: GA – COM 1 of 2025

Glorious Investment Limited

Vs.

Dunlop International Limited & Anr.

For the Appellant : Mr. Jaydip Kar, Sr. Adv.
Mr. Siddharth Dey, Adv.

For the Respondent No. 1 : Mr. Debnath Ghosh, Sr. Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. Mini Agarwal, Adv

For the Respondent No. 2 : Mr. Siddhartha Lahiri, Adv.
Sk. Sariful Haque, Adv.

Hearing Concluded On : 01.09.2025

Judgment On : 04.11.2025

Om Narayan Rai, J.:-

1. This appeal is directed against an order dated June 11, 2025 whereby the Hon'ble Single Judge sitting in the Intellectual Property Rights Division of this Court has set aside the order dated July 4, 2024 passed by the Deputy

Registrar of Trademarks in application for registration of trade mark filed by the applicant (i.e. the appellant herein).

2. By the said order dated July 4, 2024, the appellant's application for registration of the mark "DUNLOP" had been allowed upon over ruling the objection raised thereto by the respondent no. 1 herein.
3. Being aggrieved by the said order dated July 4, 2024, the respondent no.1 approached this Court by filing an appeal being I.P.D.T.M.A. No. 17 of 2024 under Section 91 of the Trade Marks Act, 1999 (hereafter "the 1999 Act") as aforesaid. The same has been disposed of by the Hon'ble Single Judge by passing the order impugned thereby setting aside the order dated July 04, 2024 passed by the Deputy Registrar of Trade Mark i.e. the respondent no. 2 herein and remanding the matter to the said respondent with a direction to reconsider the same after granting an opportunity of hearing to all the parties. Hence the present appeal.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1:-

4. At the very outset, Mr. Ghosh, learned Senior Advocate appearing for the respondent no. 1 submitted that although the appeal has been levelled as "TEMPAPO-IPD" meaning thereby that it is an appeal from an order passed by a learned Judge sitting in an Intellectual Property Rights Division; the same is in fact a second appeal. Relying on the provision of Section 100A of the Code of Civil Procedure, 1908 (hereafter "the Code"), Mr. Ghosh submitted that in terms thereof where an appeal from an original or appellate decree or order had been heard and decided by a Single Judge of a High Court no further appeal could lay from the judgment and decree of such Single Judge. He took us through Section 18, Section 20, Section 21,

Section 23 and Section 91 of the 1999 Act to indicate the various stages needed to be crossed before approaching this Court by way of an appeal under Section 91 of the 1999 Act.

5. Mr. Ghosh submitted that there is no provision for any second appeal in the 1999 Act. It was submitted that for an appeal to be carried from an order passed by an Hon'ble Single Judge of this Court, it must be one that has been permitted by the statute. He then invited our attention to Section 100A of the Code. It was submitted by Mr. Ghosh that the same clearly provided that even if an appeal against an order of an Hon'ble Single Judge had been provided for in the Letters Patent the same could not be filed because of the bar contained in Section 100A of the Code.
6. He next placed Rules 2(a), 2(d) and 2(o) of the Intellectual Property Rights Division Rules of the High Court at Calcutta, 2023 (hereafter "the said Rules") and submitted that a meaningful reading of the said provisions clearly indicates that no second appeal could have been filed against an order passed by an Hon'ble Single Judge of this Court in an appeal preferred under Section 91 of the 1999 Act.
7. In support of the proposition that Section 100A of the Code specifically excluded a Letters Patent appeal, he relied on the following decisions :—
 - i) ***Kamal Kumar Dutta & Anr. vs. Ruby General Hospital Limited & Ors.***¹;
 - ii) ***P.S. Sathappan vs. Andhra Bank Ltd. & Ors.***²;
 - iii) ***Vasanthi vs. Venugopal***³;

¹ (2006) 7 SCC 613

² (2004) 11 SCC 672

³ (2017) 4 SCC 723

iv) ***Avtar Narain Behal vs. Subhash Chander Behal***⁴.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2:-

8. Mr. Siddhartha Lahiri, learned Advocate appearing for the respondent no. 2 adopted the submissions made by Mr. Ghosh. While attempting to supplement the submissions of Mr. Ghosh, Mr. Lahiri invited our attention to Section 97 of the 1999 Act and submitted that an appeal may lie against such order as the same would be original in nature. He then took us to Rule 2(o)(v) of the said Rules and submitted that the same permits an appeal only in cases of original orders passed by the High Court and not appellate orders.

SUBMISSIONS ON BEHALF OF THE APPELLANT:-

9. Mr. Joydip Kar, learned Senior Advocate appearing for the appellant took us through definitions of decree and order in Section 2 (2) of the Code and submitted that the bar in Section 100A of the Code would only be confined to a second appeal preferred against a judgment and decree passed by an Hon'ble Single Judge while exercising appellate power in respect of a decree or order passed by a Civil Court under the provisions of the Code. It was submitted that the Registrar whose order had been impugned before the Hon'ble Single Judge under Section 91 of the 1999 Act, is not even akin to a Civil Court far less a Civil Court and that being so the bar contained in Section 100A of the Code would not be attracted at all.
10. He further submitted that the order impugned in the present appeal has been passed by the Hon'ble Single Judge sitting in the Intellectual Property Rights Division as specified in Rule 4 of the said Rules and an order passed

⁴ ILR (2009) II Delhi 411

by an Hon'ble Single Judge would be appealable before the Division Bench sitting in the Intellectual Property Rights Appellate Division as specified in Rule 5 of the said Rules. He then took us through the provision of Rule 2(o)(iii) and Rule 2(o)(iv) and submitted that the expression "*all applications and appeals required to be filed before the High Court consequent to the ... Act 2021*" clearly indicates that an order passed in an appeal filed under Section 91 of the 1999 Act, would be appealable under Rule 2(o)(v) of the said Rules.

11. Mr. Kar then referred to a judgment of the Division Bench of Delhi High Court in the case of ***Promoshirt SM SA vs. Armassuisse & Anr.***⁵ and submitted that a similar contention as raised by the respondents in this appeal had been negated by the Delhi High Court in the said judgment by holding that the bar of Section 100A would be attracted only to such a second appeal that has been preferred against a judgment of an Hon'ble Single Judge passed in appeal against a decree or order passed by a Civil Court and that a Registrar of Trademarks would not qualify to be called a Civil Court. He also relied on another judgment of Delhi High Court in the case of ***Resilient Innovations Pvt. Ltd. vs. Phonepe Pvt. Ltd. & Anr.***⁶ for the proposition that there is nothing in the 1999 Act to suggest that the legislature has, by implication, excluded one level of scrutiny that would be available by way of an intra-court appeal preferred under the Letters Patent.

ANALYSIS & DECISION:-

12. We have heard the learned Advocates for the respective parties and considered the material on record.

⁵ 2023 SCC OnLine Del 5531

⁶ 2023 SCC OnLine Del 2972

13. The issue as to whether a Letters Patent appeal is maintainable against an order passed by an Hon'ble Single Judge in an appeal preferred against an order passed by the Registrar of Trademarks (hereafter "the Registrar") is not one of first impression. It had arisen for the first time over seven decades ago in the case of **National Sewing Thread Co. Ltd. vs. James Chadwick & Bros. Ltd.**⁷ when the first statutory trademark law of the country i.e. the Trademark Act, 1940 (hereafter "the 1940 Act") governed the field. The issue was decided by the Hon'ble Supreme Court in the following manner:-

"8. Section 76(1) provides:

"76. Appeals.—(1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar under this Act or the Rules made thereunder to the High Court having jurisdiction."

9. The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane, L.C. in National Telephone Co. Ltd. v. Postmaster General [National Telephone Co. Ltd. v. Postmaster General, 1913 AC 546 (HL)], in these terms: (AC p. 552)

"... When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

The same view was expressed by Their Lordships of the Privy Council in Adaikappa Chettiar v. Chandrasekhara Thevar, (1946-47) 74 IA 264 : 1947 SCC OnLine PC 53] wherein it was said : (IA p. 271)

⁷ (1953) 1 SCC 794

“... where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal....”

10. Again, in *Secy. of State for India in Council v. Chelikani Rama Rao* [*Secy. of State for India in Council v. Chelikani Rama Rao*, (1915-16) 43 IA 192 : ILR (1916) 39 Mad 617 : 1916 SCC OnLine PC 42] , when dealing with the case under the Madras Forest Act, Their Lordships observed as follows : (IA p. 197)

“... It was contended on behalf of the appellant that all further proceedings in courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In Their Lordships' opinion this objection is not well founded. Their view is that when proceedings of this character reach the District Court that Court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply.”

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act.”

[Emphasis by us]

- 14.** The judgment in the case of ***National Sewing Thread Co. Ltd.*** (supra) would have put a closure to the point of maintainability of the appeal raised by Mr. Ghosh inasmuch as on a comparative reading of the two appellate provisions (i.e. Section 76 of the 1940 Act and Section 91 of the 1999 Act), we find that both share a common ground in merely providing for a right of appeal and saying “nothing more about it.” In such a situation, the answer to

the objection raised would also necessarily be the same. For facility of reference, the provision for appeal against an order of the Registrar in the 1999 Act may also be noticed:-

“91. APPEALS TO THE HIGH COURT:

(1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the High Court within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the High Court shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and by such fees as may be prescribed.”

15. But there is one hurdle that prevents us from overruling the objection at the threshold. At the time when ***National Sewing Thread Co. Ltd.*** (supra) was decided Section 100A was not there in the Code. It therefore needs to be seen as to whether insertion of the said provision would affect the exercise of appellate jurisdiction by the High Court in the present case. In case it does, an appeal may not be maintainable against an order passed on an appeal under Section 91 of the 1999 Act.

16. The Division Bench of Delhi High Court has in the case of ***Promoshirt SM SA*** (supra) held that Section 100A of the Code would apply to only appeals preferred against orders passed by Civil Courts. Paragraph 77 of the report contains the conclusion on this point. The same reads thus:-

“77. We would think that the intent of Section 100A would be confined to a second appeal when preferred against a judgment of a Single Judge exercising appellate

powers provided it pertained to a decree or order as defined by the Code. The bar would thus only operate where the decree or order against which the appeal was preferred before the Single Judge was of a civil court. We further note that Section 2(14) uses the expression “civil court” and not “court”. It would thus be doubtful whether the “trappings of a court” test as generally formulated would have any application. However, even if we were to proceed on the basis that such a test could be justifiably invoked for the purposes of Section 100A, the Registrar of Trademarks would not qualify the standards as enunciated.”

17. The conclusion reached by the Division Bench of Delhi High Court that the bar contained in Section 100A of the Code would apply only to an appeal carried against an order of a Court is quite apt. However, when the Hon’ble Supreme Court has in the case of **Kamal Kumar Dutta** (supra) extended the prohibition contained in the said provision to an order passed by the Company Law Board also, on the ground that the same has “all trappings of a Court” we would fail in our duty if we stop short of examining as to whether or not the Registrar has all the trappings of a Court. The Division Bench of the Delhi High Court was “*doubtful whether the “trappings of a court” test as generally formulated would have any application.*” The later observation of the Delhi High Court in the paragraph extracted above that “*However, even if we were to proceed on the basis that such a test could be justifiably invoked for the purposes of Section 100A, the Registrar of Trademarks would not qualify the standards as enunciated.*”- is a conclusion which was reached on the basis that there was no deeming provision in the 1999 Act whereunder the Registrar could be treated to be a Court. We therefore need to conduct the test.

18. Before proceeding further, it needs to be pointed out that the earlier judgment in the case of **National Sewing Thread Co. Ltd.** (supra) which

was decided by a larger Bench (i.e. three Judge Bench) of the Hon'ble Supreme Court has not been considered in **Kamal Kumar Dutta** (supra). This would have denuded **Kamal Kumar Dutta** (supra) of its authority as a precedent on the present issue but since the same has been decided on the basis of Section 100A of the Code which was not in existence when **National Sewing Thread Co. Ltd.** (supra) was decided, therefore, the precedential flavour of **Kamal Kumar Dutta** (supra) remains intact.

19. The relevant observations of the Hon'ble Supreme Court in **Kamal Kumar Dutta** (supra) may now be noted. The same are available in paragraphs 21 to 23 of the report:-

“21. But after the amendment the power which was being exercised under Sections 397 and 398 of the Act by the learned Single Judge of the High Court is being exercised by CLB under Section 10-E of the Act. Appeal against the order passed by CLB, lies to the High Court under Section 10-F of the Act. Therefore, the position which was obtaining prior to the amendment in 1991 was that from any order passed by the Single Judge exercising the power under Sections 397 and 398 of the Act, the appeal used to lie before the Division Bench of the High Court. But after the amendment the power has been given to CLB and appeal has been provided under Section 10-F of the Act. Thus, Part I-A was inserted by the amendment with effect from 1-1-1964. But the constitution of the Company Law Board and the power to decide application under Sections 397 and 398 of the Act was given to CLB with effect from 31-5-1991 and appeal was provided under Section 10-F of the Act with effect from 31-5-1991. Therefore, on reading of Sections 10-E, 10-F, 397 and 398 of the Act, it becomes clear that it is a complete code that applications under Sections 397 and 398 of the Act shall be dealt with by CLB and the order of CLB is appealable under Section 10-F of the Act before the High Court. No further appeal has been provided against the order of the learned Single Judge. Mr Nariman, learned Senior Counsel for the respondents submitted that an appeal is a vested right and, therefore, under clause 15 of the Letters Patent of the Calcutta High Court, the appellants have a statutory right to prefer appeal irrespective of the fact that no appeal has been provided against the order of the learned Single Judge under the Act. In this connection, learned counsel invited our attention to a decision

of this Court in *Garikapatti Veeraya v. N. Subbiah Choudhury* [1957 SCR 488 : AIR 1957 SC 540] and in that it has been pointed out that the appeal is a vested right. The majority took the view that the appeal is a vested right. It was held as follows: (SCR p. 488)

“... that the contention of the applicant was well founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.

The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and comprised all successive rights of appeal from court to court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment, either expressly or by necessary intendment.”

22. So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment, either expressly or by necessary intendment. Parliament while amending Section 100-A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1-7-2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of the learned Single Judge to the Division Bench. Section 100-A of the Code of Civil Procedure reads as follows:

“100-A. No further appeal in certain cases.—Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.”

23. Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by CLB and against that an appeal has been provided before the High Court under Section 10-F of the Act, that is, an appeal from the original order. Then in that case no further letters patent appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where the learned Single Judge hears an appeal from the original order. Original order in the present case was passed by CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10-F of the Act before the High Court. The learned

Single Judge having passed an order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100-A. The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising the Letters Patent in a matter where a Single Judge has decided the appeal from the original order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under Sections 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.”

- 20. *Kamal Kumar Dutta*** (supra) was decided by the Hon’ble Supreme Court in the context of Section 10F of the Companies Act, 1956. The said provision may also be noticed:-

“10F. APPEALS AGAINST THE ORDERS OF THE COMPANY LAW BOARD:

Any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies (Second Amendment) Act, 2002 may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

- 21.** Notably the provision of Section 10F too, in a manner similar to the provision of Section 76 of the 1940 Act, only “confers a right of appeal to the

High Court and says nothing more about it". Therefore, a Letters Patent Appeal should have been maintainable going by the authoritative dictum of **National Sewing Thread Co. Ltd.** (supra) yet **Kamal Kumar Dutta** (supra) held otherwise since in the said case the Hon'ble Supreme Court applied the provisions of Section 100A of the Code and found the Company Law Board to have all the trappings of a Court.

- 22.** In the paragraphs extracted above, the Hon'ble Supreme Court has noted the Company Law Board (hereafter "the CLB") was constituted for shouldering the same judicial business that the Single Bench of the High Court did prior to the amendment of the Companies Act, 1956 (hereafter "the 1956 Act") in 1991. It has been noted that earlier any order passed by the Single Judge exercising jurisdiction under Sections 397 and 398 of the 1956 Act was appealable before the Division Bench of the High Court. After the 1991 amendment the original authority was transferred to the Company Law Board and appeal thereof was provided for before the Single Judge under Section 10F of the 1956 Act. A reading of the relevant provisions of the 1956 Act would also reveal that the CLB had powers and discharged functions akin to that of a Civil Court. To be precise, in terms of Section 10E(4C) the CLB had powers vested in a Court under the Code, while trying a suit, in respect of discovery and inspection of documents or other material objects producible as evidence; enforcing the attendance of witnesses and requiring the deposit of their expenses; compelling the production of documents or other material objects producible as evidence and impounding the same; examining witnesses on oath; granting adjournments and reception of evidence on affidavits. In terms of Section 10E (4D) the CLB was

deemed to be a Civil Court for the purposes of Section 195 and [Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)] and every proceeding before it was deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and for the purpose of Section 196 of that Code. On the strength of the provisions of Section 634A of the 1956 Act, any order made by the CLB could be enforced by it in the same manner as if it was a decree made by a Civil Court in a suit and in the case of the CLB's inability to execute such order, the CLB could send its order for execution to the relevant Court within the local limits of whose jurisdiction the person concerned resides or voluntarily carries on business or the company concerned has its registered office. It was under such circumstances that the Hon'ble Court held that the CLB had all the trappings of a Court.

23. As to what really constitutes "trapping of court" was succinctly explained by the Hon'ble Supreme Court in the case of ***Associated Cement Companies Ltd. vs. P.N. Sharma & Anr.***⁸. Although the said observations came to be made while discussing the maintainability of a special leave petition under Article 136 of the Constitution of India, yet, the same throw instructive light on what "trapping of court" means. The same reads thus:-

"33. The question which we have to decide in the present appeal is whether the State Government is a tribunal when it exercises its authority under Rule 6(5) or Rule 6(6). No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in courts and which are intended to help the court in reaching its decisions. The requirements of procedure

⁸ AIR 1965 SC 1595

which is followed in courts and the possession of subsidiary powers which are given to courts to try the cases before them, are described as trappings of the courts, and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears appeals under Rule 6(5) and Rule 6(6). But as we have already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by Rule 6(5) and Rule 6(6), we feel no hesitation in holding that it is a tribunal within the meaning of Article 136(1)."

[Emphasis by us]

- 24.** The same principles still govern the field. The later judgments of the Hon'ble Supreme Court on the point evince the fact. In **Kihoto Hollohan vs. Zachillhu & Ors.**⁹ the Hon'ble Supreme Court observed as follows:-

"98. But then is the Speaker or the Chairman acting under Paragraph 6(1) a Tribunal? "All tribunals are not courts, though all courts are tribunals". The word "courts" is used to designate those tribunals which are set up in an organised State for the Administration of Justice. By Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the courts are there to restore the vinculum juris, which is disturbed. (See Harinagar Sugar Mills

⁹ 1992 Supp (2) SCC 651

Ltd. v. Shyam Sundar Jhunjhunwala [(1962) 2 SCR 339: AIR 1961 SC 1669: (1961) 31 Comp Cas 387]). In that case Hidayatullah, J. said: (SCR p. 362)

“... By ‘courts’ is meant courts of civil judicature and by ‘tribunals’, those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that the courts have ‘an air of detachment’. But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient.”

[Emphasis by us]

25. The observations of the Hon’ble Supreme Court in **State of Gujarat & Anr. vs. Gujarat Revenue Tribunal Bar Association & Anr.**¹⁰ elaborate the point further in the following manner:-

“18. Tribunals have primarily been constituted to deal with cases under special laws and to hence provide for specialised adjudication alongside the courts. Therefore, a particular Act/set of rules will determine whether the functions of a particular tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority i.e. a situation where, (a) a statutory authority is empowered under a statute to do any act; (b) the order of such authority would adversely affect the subject; and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject; and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a “court”, but not all. In case certain powers under CPC or CrPC have been conferred upon an authority, but it has not been entrusted with the judicial powers of State, it cannot be held to be a court. (See Bharat Bank Ltd. v. Employees [1950 SCC 470 :

¹⁰ (2012) 10 SCC 353

AIR 1950 SC 188], *Virindar Kumar Satyawadi v. State of Punjab* [*AIR 1956 SC 153 : 1956 Cri LJ 326*], *Engg. Mazdoor Sabha v. Hind Cycles Ltd.* [*AIR 1963 SC 874*], *Associated Cement Companies Ltd. v. P.N. Sharma* [*AIR 1965 SC 1595*], *Rama Rao v. Narayan* [(1969) 1 SCC 167 : *AIR 1969 SC 724*], *State of H.P. v. Mahendra Pal* [(1999) 4 SCC 43 : *AIR 1999 SC 1786*] , *Keshab Narayan Banerjee v. State of Bihar* [(2000) 1 SCC 607 : 2000 SCC (Cri) 272], *Indian National Congress (I) v. Institute of Social Welfare* [(2002) 5 SCC 685 : *AIR 2002 SC 2158*], *K. Shamrao v. Asstt. Charity Commr.* [(2003) 3 SCC 563] , *Trans Mediterranean Airways v. Universal Exports* [(2011) 10 SCC 316 : (2012) 1 SCC (Civ) 148], SCC p. 338, para 53 and *Namit Sharma v. Union of India* [(2013) 1 SCC 745] .)

19. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjunwala* [*AIR 1961 SC 1669*] *Hidayatullah, J.* (as His Lordship then was) made a distinction between a “court” and a “tribunal” as is explained hereunder : (*AIR p. 1680, para 32*)

“32. ... These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary courts of civil judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts. When the Constitution speaks of ‘courts’ in Article 136, 227 or 228 or in Articles 233 to 237 or in the Lists, it contemplates courts of civil judicature but not tribunals other than such courts. This is the reason for using both the expressions in Articles 136 and 227.

By ‘courts’ is meant courts of civil judicature and by ‘tribunals’, those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature.”

[Emphasis by us]

26. A three Judge Bench of the Hon’ble Supreme Court, in the case of ***Brajnandan Sinha vs. Jyoti Narain***¹¹ while deciding as to whether a

¹¹ (1955) 2 SCC 480

Commissioner appointed under the Public Servants (Inquiries) Act, 1850 is a “Court” or not held as follows:-

“14. Sections 19 and 20 of the Penal Code (Act 45 of 1860) define the words “Judge” and the “Court of Justice” as under:

“19. “Judge”.—The word ‘Judge’ denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

20. “Court of Justice”.—The words ‘Court of Justice’ denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.”

The pronouncement of a definitive judgment is thus considered the essential sine qua non of a court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a court.

15. The Privy Council in *Shell Co. of Australia Ltd. v. Federal Commr. of Taxation* [*Shell Co. of Australia Ltd. v. Federal Commr. of Taxation*, 1931 AC 275 (PC)] thus defined “Judicial Power” at AC pp. 295-96:

“Is this right? What is ‘judicial power’? Their Lordships are of opinion that one of the best definitions is that given by Griffith, C.J. in *Huddart, Parker & Co. (Pty) Ltd. v. Moorehead* [*Huddart, Parker & Co. (Pty) Ltd. v. Moorehead*, (1909) 8 CLR 330 at p. 357], where he says:

‘I am of opinion that the words “judicial power” as used in Section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.’ ”

Their Lordships further enumerated at certain negative propositions in relation to this subject: (*Shell Co. of Australia Ltd. case* [*Shell Co. of Australia Ltd. v. Federal Commr. of Taxation*, 1931 AC 275 (PC)], AC p. 297)

“(1) A tribunal is not necessarily a court in this strict sense because it gives a final decision.

(2) Nor because it hears witnesses on oath.

(3) Nor because two or more contending parties appear before it between whom it has to decide.

4) Nor because it gives decisions which affect the rights of subjects.

(5) Nor because there is an appeal to a court.

(6) Nor because it is a body to which a matter is referred by another body.

(See R. v. Electricity Commissioners [R. v. Electricity Commissioners, (1924) 1 KB 171 (CA)] and observed at: (Shell Co. of Australia Ltd. case [Shell Co. of Australia Ltd. v. Federal Commr. of Taxation, 1931 AC 275 (PC)], AC p. 298)

“An Administrative Tribunal may act judicially, but still remain an Administrative Tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a court of judicial power.”

16. *The same principle was reiterated by this Court in Bharat Bank Ltd. v. Employees [Bharat Bank Ltd. v. Employees, 1950 SCC 470 : 1950 SCR 459] and Maqbool Hussain v. State of Bombay [Maqbool Hussain v. State of Bombay, (1953) 1 SCC 736 : 1953 SCR 730] where the test of a judicial tribunal as laid down in a passage from Cooper v. Wilson [Cooper v. Wilson, (1937) 2 KB 309 at p. 340 (CA)] was adopted by this Court: (Cooper case [Cooper v. Wilson, (1937) 2 KB 309 at p. 340 (CA)], KB pp. 340-41)*

“... A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:

(1) The presentation (not necessarily orally) of their case by the parties to the dispute;

(2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence;

(3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and

(4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.”

Maqbool Hussain case [Maqbool Hussain v. State of Bombay, (1953) 1 SCC 736 : 1953 SCR 730], above referred to, was followed by this Court in S.A. Venkataraman v. Union of India [S.A. Venkataraman v. Union of India, (1954) 1 SCC 586 : 1954 SCR 1150] where a Constitution Bench of this Court also laid

down that both finality and authoritativeness were the essential tests of a judicial pronouncement.

***17.** It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.*

[Emphasis by us]

27. We now need to examine in the light of the aforesaid guiding instructions of the Hon'ble Supreme Court as to whether or not the Registrar has trappings of a Civil Court. Section 127 of the 1999 Act provides for the powers of the Registrar in the following manner:-

"127. POWERS OF REGISTRAR:

In all proceedings under this Act before the Registrar, -

(a) the Registrar shall have all the powers of a civil court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Registrar may, subject to any rules made in this behalf under section 157, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court:

Provided that the Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or provision of services or to authorize the use of the mark;

(c) the Registrar may, on an application made in the prescribed manner, review his own decision."

28. Thus the Registrar has all powers including power to review its decision and to impose costs that a Civil Court has for the purposes mentioned in Section 127 of the 1999 Act. The order as to costs passed by the Registrar has been made executable as a decree of Civil Court.

29. A journey through the provisions of Chapter III of the 1999 Act would reveal that the process for registration of a trademark is initiated by an

application made in terms of Section 18 by a “*person claiming to be the proprietor of a trade mark or proposed to be used by him*”. Section 20 of the 1999 Act mandates advertisement of the application and Section 21 thereof provides for filing of opposition/counter-statement by any person who seeks to oppose the application for registration. Section 22 of the 1999 Act confers power on the Registrar to allow amendment of the application for registration. The Registrar is to ultimately take a decision on the application filed before it by either accepting the application or rejecting the same upon considering the opposition thereto, if any. The Trademarks Rules, 2017 (hereafter “the Rules”) have been framed by the government in exercise of its powers under Section 157 of the 1999 Act, which provides a detailed procedure for examination of an application for registration, hearing of the objections thereto and rendering a decision by the Registrar prior to its acceptance.

- 30.** A holistic reading of the various provisions of the 1999 Act and the Rules framed thereunder hardly leave any room for doubt that the Registrar has almost all the trappings of a Court. We are conscious that there is no provision in the 1999 Act whereby the proceedings before the Registrar has been held to be judicial proceedings within the meaning of the Code of Criminal Procedure or Indian Penal Code as was there in respect of the erstwhile Intellectual Property Law Appellate Board under the pre-amendment 1999 Act or the CLB under the 1956 Act but then that by itself would not detract us from the conclusion that the Registrar has all the trappings of a Civil Court for the purpose of deciding as to whether a mark should be registered in favour of a person or not. A decision to register

makes the person concerned the exclusive owner of the registered trademark in terms of Section 28 of the 1999 Act. Such decision is taken on the basis of the evidence adduced by the person concerned and upon considering the opposition to the application along with the evidence in support of the opposition. The Registrar thus has a duty to act judicially and fairly. Even if an opposition is not filed, the Registrar has a duty to objectively scrutinise the application, examine the facts in the light of the evidence adduced in order to determine if the trademark meets the requirements for registration under the 1999 Act and then take a decision. The same would have been a case for a Civil Court as well where the defendant had not filed its written statement and the case was proceeding *ex-parte*. The Court would also in such a case be required to pass a judgment in favour of the plaintiff only upon the plaintiff proving his case. The decision taken by the Registrar to either accept the request for registration or to reject the same directly impacts and determines the applicant's legal rights and liabilities and in a case of an opposition the rights and liabilities of both the parties. This is an essential characteristic of a judicial function.

31. We therefore find that the Registrar has the trappings of a Court and that being so the ratio of **Kamal Kumar Dutta** (supra) can be effectively applied to the facts of the present case as well thereby ousting any avenue for a Letters Patent appeal against an order passed under Section 91 of the 1999 Act.
32. We have another weighty reason to hold that a further appeal was not intended by the legislature. The appellate provision in the Trade and Merchandise Marks Act, 1958 (hereafter “the 1958 Act”) read as follows:-

“109. APPEALS:

(1) No appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government or from any act or order of the Registrar for the purpose of giving effect to any such decisions, order or direction.

(2) Save as otherwise expressly provided in sub- section (1) or in any other provision of this Act, an appeal shall lie to the High Court within the prescribed period from any order or decision of the Registrar under this Act or the rules made thereunder.

(3) Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be prescribed.

(4) Every such appeal shall be heard by a single Judge of the High Court: Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(5) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court.

(6) The High Court in disposing of an appeal under this section shall have the power to make any order which the Registrar could make under this Act. (7) In an appeal by an applicant for registration against a decision of the Registrar under section 17 or section 18 or section 21, it shall not be open, save with the express permission of the court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced, by the party in the proceedings before the Registrar, as the case may be, and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(8) Subject to the provisions of this Act and of the rules made thereunder, the provisions of the Code of Civil Procedure, 1908, (5 of 1908) shall apply to appeals before a High Court under this Act.”

33. The predecessor Act of the 1999 Act thus specifically provided a forum for second appeal. Upon the repeal of the 1958 Act, a similar provision was consciously avoided by the legislature while creating an Appellate Board for hearing appeals under the 1999 Act. Should such omission be held to be without reasons? It is settled law that deletion of a provision from a statute is to be given due weightage in probing the legislative intent. Why should a

similar consideration not be factored in while considering a successor legislation given the fact that a specific provision for appeal which was there in the predecessor Act is not there in the successor Act?

- 34.** Originally (i.e. prior to the 2021 amendment) since Section 91 of the 1999 Act provided for appeal against an order of the Registrar before the Intellectual Property Appellate Board (hereafter “the Board”) and no further, the orders passed by the Board were assailed either by way of a writ petition under Article 226 or by way of a revision under Article 227 of the Constitution of India. All of these constitutional remedies are discretionary in nature and cannot be exercised as a matter of right. To wit, the pre-amendment 1999 Act also, at least seemingly, did not encourage a second appeal. Subsequently, the Tribunals Reforms Act, 2021 was enacted and thereby several amendments were effected in the 1999 Act. One of them was the change of the appellate forum under Section 91 from the Board to the High Court. Notably, apart from the change of the forum of appeal, the other portion of Section 91 was left untouched. Should the clear legislative intent in the special law be then allowed to be overridden by a long drawn interpretative process and by reading the same to be making room for Letters Patent appeals? We think not. It is settled law that no appeal can be preferred without there being any provision therefor. It is equally settled that a special statute may exclude a general appellate provision both expressly as well as by implication. Here the exclusion is express by application of Section 100A and is tacitly implied by the exclusion of the second appellate provision in the present statute which was there in the predecessor statute.

35. In view of the aforesaid, we do not find any reason to not extend the prohibition contained in Section 100A of the Code to appeals filed under Section 91 of the 1999 Act. We therefore respectfully disagree with the view taken by the Delhi High Court in the case of **Promoshirt SM SA** (supra). **Resilient Innovations Pvt. Ltd.** (supra) rendered by another Division Bench of Delhi High Court is distinguishable inasmuch as the same arises out of a case under Section 57 of the 1999 Act. Section 57 of the 1999 Act contemplates application for rectification filed before the Registrar or High Court. It is therefore an original proceeding and not an appellate proceeding. The same would therefore be outside the purview of the provisions of Section 100A of the Code and Letters Patent appeals thereagainst would be maintainable before the Division Bench.
36. In fact a Division Bench of this Court has also applied the ratio of **Kamal Kumar Dutta** (supra) in a similar case where a Letters Patent appeal was preferred against an order passed by an Hon'ble Single Judge under Section 19(2) of the Designs Act, 2000. In the case being **The Assistant Controller of Patent and Designs vs. Vishnuprasad Mohanlal Panchal & Anr.**¹² the Division Bench refused to entertain the appeal observing as follows:-

“1. The Court:- Heard learned Counsel for appellant and respondents. The counsel on behalf of the respondents, who filed the appeal in question, from where the impugned order comes from raises the issue of maintainability of the appeal filed under Section 15 of Letters Patent as an intra Court appeal. Apparently, the matter which came before the learned Single Judge was in the form of an appeal under Sub Section (2) of Section 19 of the Designs Act, 2000. Learned Judge on merits observed there was inordinate delay on the part of the Assistant Controller of Patent and Designs keeping the matter pending for about two years without passing any orders since in the absence of any time period prescribed within which the

¹² 2016 SCC OnLine Cal 10988

application had to be disposed of, three months would have been the reasonable time. While disposing of the appeal on account of laches and the delay on the part of the Assistant Controller of Patent & Designs the learned Judge imposed a cost of Rs. 10,000/- to be deducted from the salary of the concerned Assistant Controller. Learned Advocate for the respondents brings to our notice (2006) 2 SCC 613 in the matter of (Kamal Kumar Dutta v. Ruby General Hospital Ltd.) paragraphs 18 to 28. In the referred decision an appeal came to be filed against the order of Company Law Board before the learned Single Judge under Section 10F of the Companies Act. When the order of the learned Single Judge was impugned before the Apex Court in a Special Leave Petition, their Lordships opined that since the exercise of authority under Sections 397 and 398 was conferred upon Company Law Board and the matter so challenged before learned Single Judge was by way of an appeal, therefore, there cannot be intra court appeal and Special Leave Petition before the Apex Court challenging the impugned order of the learned Single Judge was the right procedure. Rejecting the arguments of the opposite party before the Apex Court their Lordships opined that Special Leave Petition was maintainable. Though the present controversy is not under Companies Act but the discussion and the reasoning given in paragraphs 20 to 28 of the said judgment would apply to the facts of the present case.”

[Emphasis by us]

37. Insofar as the other judgments cited by the respondent no.1 in support of his submissions against the maintainability of the present appeal are concerned, we notice that the judgment in the case of **P.S. Sathappan** (supra) cited by the respondent was duly considered by **Kamal Kumar Dutta** (supra) in paragraph 26 thereof and after noting several other judgments the Hon’ble Supreme Court held that the provisions of Section 100A of the Code would bar a Letters Patent appeal against an order passed by an Hon’ble Single Judge of the High Court on an appeal under section 10F of the Companies Act, 1956 against the order of the CLB.
38. The judgment in the case of **Vasanthi** (supra) is an authority *inter alia* on the point that only Letters Patent appeal, filed prior to the coming into force of Section 100A of the Code would be maintainable and by virtue of the Bar

contend therein Letters Patent appeal filed thereafter would not be maintainable.

- 39. *Avtar Narain Behal*** (supra) is a Full Bench judgment of the Delhi High Court holding (in the concluding portion of paragraph 22 of the ILR Report) that *“The language of Section 100A does not suggests that the exclusion of the right of appeal available under the Letters Patent is confined only to the matters arising under the Code and not under any enactments”*.
- 40.** For all the reasons aforesaid, we hold that the instant appeal is not maintainable. TEMPAPO-IPD 5 of 2025 is, therefore, dismissed. The connected application being GA-COM 1 of 2025 also stands dismissed accordingly. There will be no order as to costs.
- 41.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)