IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL MISCELLANEOUS PETITION NO.27 OF 2024
WITH
INTERIM APPLICATION NO.3462 OF 2025
IN
COMMERCIAL MISCELLANEOUS PETITION NO.27 OF 2024

Varun Atulya Mafatlal ....Petitioner/Applicant

Versus

Shree Vallabh Chandak & Anr. ....Respondents

Mr. Verendra Tulzapurkar, Sr. Adv. *a/w. Ashish Kamat, Sr. Adv., Abhineet Sharma & Ms Riya Gokalgandhi i/b. K.R. Parekh, Adv. For Petitioner/Applicant.*

Mr. Sharan Jagtiani, Senior Advocate *a/w. Mr. Amit Jajoo, Priyank Kapadia a/w. Amit J., Vedant Chhajed & Arjun Deshmukh i/b. Trilegal, for Respondent No.1.*

Mr. Nikhil Kumar Rungta *a/w. Mr. Jayesh Ramgiri, for Respondent No.2.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : NOVEMBER 19, 2026

Aarti Palkar

AARTI GAJANAN PALKAR
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JUDGEMENT:

Context and Factual Background:

1. This is a petition under Section 57 of the Trade Marks Act, 1999 ("***TM Act***") filed by Mr. Varun Atulya Mafatlal ("***Varun***") invoking the rectification jurisdiction of this Court. Varun seeks expungement of the entries in the Register of Trade Marks ("***Register***") in favour of Respondent No. 2, Malavika Taktawala ("***Malavika***") and Respondent No. 1, Shree Vallabh Chandak ("***Chandak***") in relation to the device marks of 'SUNGRACE MAFATLAL', registered in *Class 24* (No. 2081790) and *Class 25* (No. 2177358) (together, the "***Marks***"). The Registrar of Trade Marks ("***Registrar***") is Respondent No. 3.

1. Varun's Interim Application No. 3462 of 2025 ("***Condonation IA***") seeks condonation of 557 days' delay (as computed by Varun) in filing the Petition without prejudice to Varun's stance that there is no delay in filing the Petition.

2. The factual matrix relevant to the case may be summarised thus:

A] Ms. Madhuri Mafatlal ("***Madhuri***") applied for registration of the Marks in 2011. The Class 24 application bears the date January 7, 2011 and the Class 25 application bears the date July 19, 2011;

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B] The certificates of registration, in her name, were sealed on May 5, 2017 (Class 24) and August 4, 2017 (Class 25), by which time Madhuri was no more;

C] Madhuri died on July 15, 2013 and is said to have made a will on February 6, 2012[1] ("***Madhuri Will***"). Her offspring includes two sons Mr. Ajay Mafatlal ("***Ajay***" – prior to gender reassignment, Ms. Aparna Mafatlal) and Mr. Atulya Mafatlal ("***Atulya***"). Ajay is said to have died on August 22, 2015 and is said to have made a will on August 5, 2013[2] ("***Ajay Will***"). Neither the Madhuri Will nor the Ajay Will is probated or even sought to be probated. Atulya died in September 2022. There is no reference by any party to any will said to have been made by Atulya;

D] Varun is Atulya's son. Madhuri also had three daughters – Varun's paternal aunts, namely, Malavika, Gayatri Jhaveri ("***Gayatri***"), Ms. Kunti Shah ("***Kunti***");

E] Malavika contends that Madhuri bequeathed the Marks to Ajay, and Ajay bequeathed them to Malavika and Gayatri[3]. On December 11, 2015, Malavika filed two Form TM-16 applications ("***2015 Applications***"), under the Trade Marks Rules, 2002 ("***2002 Rules***") seeking to be recorded as the subsequent proprietor of the Marks. At

[1] *Exhibit H of the Petition, Pages 102–105*
[2] *Exhibit M of the Petition, Pages 150–153*
[3] *Malavika's Reply Affidavit, Paras 7.14 and 7.17, Pages 209–211*

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this stage, Malavika would produce the Madhuri Will, the death certificates and an undertaking from Gayatri dated December 7, 2015 ("***Gayatri Undertaking***"). By this time, Ajay was dead (August 2015) but the Ajay Will would not be produced by Malavika, although the Gayatri Undertaking would contain an explicit reference to the Ajay Will with the date being left blank;

F] Neither side is able to indicate that any order was passed on the 2015 Applications. Effectively, these applications are still pending adjudication on the docket of the Registrar;

G] On August 13, 2015, Suit No. 685 of 2016 ("***Suit 685***") was filed by Malavika and Gayatri Jhaveri as Suit (L) No. 830 of 2015. Suit 685 is still pending on the docket of this Court in relation to Ajay's estate;

H] As stated above, the Marks were registered only on May 5, 2017 (Class 24) and August 4, 2017 (Class 25)[4]. By this time, Madhuri, the applicant, was dead (in July 2013) to the knowledge of the Registrar (by the 2015 Applications filed in December 2015[5]);

I] On May 11, 2018, Malavika filed Form TM-P[6] under the Trade Marks Rules, 2017 ("***2017 Rules***", the successor to the 2002 Rules), seeking transfer of the Marks to her name recognising her as the owner

[4] *Exhibit B to the Petition, Pages 65–67*
[5] *Exhibits I and J to the Petition, Pages 106 and 116*
[6] *Exhibit L to the Petition, Pages 132–133*

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("***2018 Application***"). This time, Malavika produced a photo copy of the Ajay Will[7];

J] By an order dated July 5, 2018, Respondent No.3, the Registrar of Trade Marks, Mumbai, ("***Registrar***") recorded Malavika as the subsequent proprietor, in disposal of the 2018 Application. No notice was issued to any of the relatives. On the next day i.e. on July 6, 2018, Malavika is said to have executed deeds of assignment by which she assigned the Marks to Chandak for a sum of Rs. 9,00,000 for each of the two Marks ("***Deeds of Assignment***");

K] Chandak filed a Form TM-P (form for post-registration changes) on July 12, 2018 ("***Chandak Application***") seeking recognition of the assignment to him. The Registrar recorded Chandak as the proprietor of the Marks on September 17, 2018 on the strength of the Chandak Application, the Deeds of Assignment and no-objection letters of Malavika dated September 6, 2018;

L] Varun claims to have first learnt of Chandak's use of the Marks only in August 2023 to discover the entries on a search of the Register, well after Atulya died in September 2022. Varun affirmed this petition on December 7, 2023 and filed it on December 13, 2023. The

[7] *Exhibit M to the Petition, Pages 150–153*

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Condonation IA was filed only on July 2, 2025, after Chandak raised the issue of limitation.

Contentions of the Parties:

3. Against this backdrop, I have heard at length, submissions by Dr. V.D. Tulzapurkar and Mr. Ashish Kamat, Learned Senior Advocates on behalf of Varun and Mr. Sharan Jagtiani, Learned Senior Advocate on behalf of Chandak and Mr. Nikhil Rungta, Learned Advocate on behalf of Malavika. With their assistance, I have reviewed the material on record. The Registrar has chosen not to enter appearance or even file any pleadings.

4. Varun seeks rectification by deletion of the entries in favour of Malavika and Chandak from the Register under Section 57 of the TM Act. He seeks that upon rectification, Madhuri should be shown as proprietor of the Marks. He also seeks an interim injunction against Chandak's use of the Marks. Chandak submits that the Petition is hopelessly barred by limitation, and the reliance on the purported weight of merits cannot cure limitation. He would submit that limitation must be dealt with first before delving into merits.

5. In a nutshell, Varun's key contentions are:

A] Varun is a "person aggrieved", being Madhuri's grandson and the Mafatlal family name being his family legacy. Chandak was a mere

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licensee of the family who has usurped the Marks in a clandestine operation. Varun contends that there was an oral family settlement by which it was agreed that the Marks could only be used by members of Madhuri's family and their descendants and they could not be alienated to anyone outside the family;

B] There is no delay. The right to apply under Section 57 of the TM Act is distinct from a right to sue. Time under Article 137 of the Schedule to the Limitation Act, 1963 ("***Limitation Act***") runs only from the date the right to apply accrues. Section 17 of the Limitation Act would apply because fraud and concealment are writ large and only upon discovery of the fraud can limitation start to run – that would occur only in August 2023, when Varun learnt of the entries;

C] The transmission of title to the Marks rests on un-probated and uncertified Wills. The pendency of Suit 685 too is suppressed from the Registrar. No notice went to the heirs. There is no duty on any person to keep vigil and monitor the Register;

D] Effectively, the Marks have been first registered in the name of a dead person. Further movement of title to that registration has been registered without following due process under the TM Rules. Rule 75 allows only the person "entitled" to the mark to apply for transmission

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or assignment. Respondents were never "entitled" to the subject marks. Rule 76 of the 2017 Rules required a duly certified copy of the original instrument, and this was clearly not even sought by the Registrar. This has allegedly vitiated the integrity of the Register;

E] Section 213 of the Indian Succession Act, 1925 ("***Succession Act***") bars recognition of rights under an un-probated Will. The notarisation of the Wills relied on in this case, is no proof. The executors did not assent as required under Sections 211, 307, 332 and 333 of the Succession Act. Besides, Madhuri's Will does not cover the Class 25 Mark. Rule 55 of the 2017 Rules is mandatory and was not followed, since the Marks were registered in the name of a person who had died;

F] Integrity of the Register is a foundational principle under the TM Act. Not only was there no compliance with due process but also there is an evident lack of any speaking order to effect the registration or to effect the transfer of registration by the Registrar. The Registrar acted without notice, without a speaking order, and without inquiry into doubts. The Registrar's conduct warrants this Court's intervention.

6. Chandak's core contentions may be summarised thus:

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A] The Condonation IA must be decided first – the purported strength of merits is irrelevant when no sufficient cause to condone the delay is shown;

B] Under Article 137 of the Schedule to the Limitation Act, the right to apply accrued when the entry was made in Chandak's name in September 17, 2018. The registration of the assignment is constructive notice to the world at large. In any case, Varun, as a successor of Atulya, inherits the clock of limitation of his predecessor, who did not act throughout his lifetime;

C] For Section 17 of the Limitation Act to apply, Varun is required to have exercised reasonable diligence. Sufficient cause is to be read strictly in commercial matters. Varun is actually a proxy for Mafatlal Industries Ltd. ("***Mafatlal Industries***"), a company belonging to the Arvind Mafatlal branch of the family, which is not even connected to the Yogindra Mafatlal branch to which Atulya belonged. The attorneys of Mafatlal Industries issued a legal notice to Chandak about the use of the Marks way back on February 26m, 2015, and it is they who have conducted the search in the Register, and have launched these proceedings, using Varun as a proxy. Acquiescence and waiver on the part of Mafatlal Industries, and thereby Varun, bars relief; and

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D] Section 213 of the Succession Act bars reliance on an un-probated Will only before a court, which the Registrar is not. Rule 55 of the 2017 Rules is directory and not mandatory. Under Section 45 of the TM Act and Rule 77, the Registrar may seek further proof only when reasonable doubt has arisen. Under Section 23 of the TM Act, the effect of the registration relates back to the date of the filing. Chandak is a *bona fide* assignee for value and there is nothing untoward to warrant this Court's interference.

7. Malavika's contentions may be summarised as follows:

A] Malavika held a *bona fide* belief of title under the Wills. There was no concealment;

B] The Registrar knew of the deaths and there can be no claim of concealment. Rule 55 of the 2017 Rules is fully complied with; and

C] Assent of executors of the Wills can be inferred under Sections 333 to 336 of the Succession Act. Gayatri, the executor of the Madhuri Will had recognised Malavika's interest; and

D] Malavika has not been and is not involved in any business and she was guided by Chandak and one Mr. Subhash Choksi ("***Choksi***"), a

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broker through whom royalties had been contracted with Chandak for use of the Marks.

Points for Determination:

8. The points that arise for determination based on submissions by the parties may be summarised thus:

A] Whether Varun is a "person aggrieved";

B] Whether there has been a delay in filing the captioned Petition and if so, whether such delay may be condoned; whether the right to apply accrued on the entries being made in July 2018 (Malavika) and September 2018 (Chandak) or on Varun's purported knowledge in August 2023, with Varun claiming through a predecessor who did not act throughout his lifetime; whether fraud, suppression and want of diligence affect the computation of the period of limitation; whether the integrity of the Register has a bearing on sufficient cause for the delay; and whether Varun's efforts to rectify the Register can be entertained;

C] Whether the entries of May and August 2017 (in the name of Madhuri); the entry on July 5, 2018 (in the name of Malavika) and the entry on September 17, 2018 (in the name of Chandak) in the Register, were made without due process being followed; and

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D] Whether, a case has been made out from the material on record for this Court to initiate a *suo motu* process under Section 57(4) of the TM Act.

Analysis and Findings:

9. At the threshold, Section 57 of the TM Act bears reproduction:

"57. Power to cancel or vary registration and to rectify the register.—

(1) On application made in the prescribed manner to the High Court or to the Registrar by any person aggrieved, the Register or the High Court, as the case may be, may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar, and the Register or the High Court, as the case may be, may make such order for making, expunging or varying the entry as it may think fit.

(3) The Register or the High Court, as the case may be, may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The Register or the High Court, as the case may be, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

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(5) ***Any order of the High Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar*** *in the prescribed manner who* ***shall upon receipt of such notice rectify the register accordingly****."*

[Emphasis Supplied]

10. A plain reading of the foregoing would indicate that if this Court comes to a finding that if Varun is a person aggrieved and has validly demonstrated a contravention in the making of the entries in the Register recognising Malavika first and Chandak subsequently, Section 57 entails the jurisdiction to rectify such contravening entry from the Register by expunging it. That apart, the Court has *suo motu* powers under Section 57(4) to make any order in the rectification jurisdiction, of course after issuing notice and giving an opportunity of being heard. Bearing this in mind, the points for determination set out above need to be dealt with.

Person Aggrieved:

11. Varun is from the Mafatlal family – the grandson of Madhuri, the original applicant for registration of the Marks. Indeed, Varun claims in the Petition that there was a purported oral family arrangement that entailed Madhuri applying for registration of the Marks, as also a prohibition on an assignment of the Marks to any third party not belonging to the Mafatlal family. While that may be a matter of evidence and would need to be tested,

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on the face of the record, it cannot be said that Varun is a completely unconnected person to the original applicant for registration.

12. It is well settled that the term "person aggrieved" must be liberally construed and if an interest in the Marks can be perceived, the Court should lean more in favour of hearing the grievance rather than shutting out the person contending to be aggrieved. Whether the grievance has been slept over for too long or whether other material would indicate that the grievance need not lead to any intervention is a matter of merits that can be considered, but after considering whether the person claiming to be aggrieved has the '*locus*' to hold a grievance.

13. The issue about whether Varun can pursue a cause of action that his father, Atulya did not pursue during his lifetime, is not one of whether Varun is a person aggrieved but one of limitation, delay and laches. Suffice it to say, without prolix reproduction from a plethora of case law cited in this regard, I would hold Varun to be a person with *locus*, who would be entitled to have a grievance about the Marks, based on the law declared in ***Hardie Trading***[8],

[8] *Hardie Trading Ltd. & Anr. v. Addisons Paint & Chemicals Ltd.,* ***(2003) 11 SCC 92****, Paragraphs 30 to 34.*

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Infosys[9], ***VR Holdings***[10] and ***Toshiba***[11] articulating principles for determination of a "person aggrieved" in the context of Section 56 of the Trade and Merchandise Marks Act, 1958 and Section 57 of the TM Act.

14. Considering Varun's membership of the Mafatlal family is not in dispute, in the facts of this case, I see no reason to hold Varun as not having locus as a person aggrieved. Had Varun been a rank outsider or some sort of an interloper or purported to be an informant, without nothing to indicate an interest in the subject matter of the Petition, there would have been a need to elaborate further on this facet. That not being the case, and considering Varun's membership of the Mafatlal family, and the Marks being founded on the Mafatlal surname, in my view, it would be appropriate hold in favour of Varun being a person aggrieved and to move on to the core issue of whether his grievances warrant intervention by this Court.

Delay, Limitation, Acquiescence, Waiver and Bona Fides:

15. Varun's father Atulya, who was the original applicant and Madhuri's son, died in September 2022. The registration of the Marks in Madhuri's

[9] *Infosys Technologies Ltd. v. Jupiter Infosys Ltd. & Anr.,* ***(2011) 1 SCC 125****, Paragraphs 30 and 31.*
[10] *V.R. Holdings v. Hero Investcorp Ltd. & Anr.,* ***2023 SCC OnLine Del 1380****, Paragraphs 62, 63 and 83 to 85.*
[11] *Kabushiki Kaisha Toshiba v. Tosiba Appliances Co. & Ors.,* ***(2008) 10 SCC 766****, Paragraph 50.*

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name took place in May and August 2017. Thereafter, the recognition of Malavika as the successor to the Marks and recognition of assignment of the Marks to Chandak by Malavika, all took place in the span of July and September 2018. The record shows that Madhuri's offspring were engaged in *inter se* litigation – Atulya and Ajay facing off, and upon Ajay requiring intensive healthcare, Gayatri and Malavika suing Atulya and Kunti to safeguard Ajay's interests.

16. In parallel, the registration of the Marks was finally effected on Madhuri's application after she passed away without a formal substitution of the applicant. In other words, in 2017, the Registrar granted registration to a person who had been dead for nearly four years, despite having had notice of Madhuri's death in 2015. Curiously, by the time the Registrar was informed about Madhuri being no more (in December 2015), Ajay too was dead (in August 2015). In December 2015, Malavika would produce the Madhuri Will before the Registrar along with the Gayatri Undertaking but not the Ajay Will, although she contends that she found both the Wills in the papers that Chandak and Chokshi had given her, after Ajay's demise. The Gayatri Undertaking refers to a Will of Ajay under which he bequeathed his properties to Malavika and Gayatri in equal portions, but inexplicably leaves blank, the date of that will.

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17. Now, the record clearly indicates that dissensions were rife in the Mafatlal family during this period with Atulya too being in the midst of multiple litigation proceedings with his siblings. If there had been an oral family settlement not only to have Madhuri apply for registration of the Marks and also that the Marks could not be alienated in favour of third parties, it would stand to reason that litigious siblings would have been vigilant about this property. Suit 685 makes no mention of the Marks and focuses on moveable assets kept in the second floor of the Mafatlal Bungalow occupied by Ajay before being moved to hospital. There is not a whisper of litigation by Atulya about the Marks during his lifetime – he would expire only in September 2022.

18. The material on record also shows that Mafatlal Industries issued a legal notice dated February 26, 2015 to Chandak about the usage of the Marks by Chandak. This was replied to on March 5, 2015 on Chandak's behalf by the same attorneys who filed the 2015 Applications in Form TM-16 on behalf of Malavika. The material on record shows multiple license agreements between entities under the control of Madhuri's offspring and entities under Chandak's ownership and control between 1998 and 2020 (nearly 21 license agreements) under which Chandak had been given the license to use the Marks for the specific extent of manufacture of fabric length.

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19. Considering that Madhuri's offspring were intensely fighting one another and the Arvind Mafatlal branch of the family (Mafatlal Industries), which was aggrieved by Chandak's usage of the marks lived in the same Mafatlal Bungalow, it would also stand to reason that Atulya could not have been unaware of Chandak's role and his sibling earning royalty from them. In much the same way Varun claims to have learnt from the Arvind Mafatlal family about the Marks being in Chandak's name in August 2023, it is more unbelievable than believable that Atulya would not have known all the way until September 2022.

20. Against that backdrop, when one examines Varun's claims being founded on his being Atulya's son, the fact that Atulya did not think it fit to perceive a cause of action to litigate about the Marks during his lifetime cannot be wished away lightly. Atulya would pass away four years after the transfer of the Marks to Chandak, without initiating any litigation. This begs the question as to whether Varun, who essentially claims through Atulya and thereby through Madhuri can now contend that he has a right to seek rectification upon purportedly obtaining knowledge that his father interests have suffered. That Madhuri and Atulya were estranged as a matter of public record, which is brought to bear into the material on record, is a separate matter altogether.

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21. Whether Varun can purport that there is no delay because he only got to know in August 2023 (at a family event from the Arvind Mafatlal family) that the Marks, bearing the Mafatlal family name is actually standing in the name of Chandak, and that he promptly filed this Petition, is the point to consider. Chandak has produced the public record of the inspection in 2023 conducted by Mafatlal Industries by the same attorneys. If Varun's stance is to be accepted, every successive generation can claim to have obtained knowledge for the first time about what transpired during the lifetime of the earlier generation through which a claim is made, and yet contend that there is no delay in pursuit of the cause of action not pursued by that earlier generation.

22. On first principles, this is difficult to accept. Atulya is not alive today for his state of mind to be tested. Suit 685 having been filed by Malavika and Gayatri against Atulya (it is pending on the docket of this Court even today); Atulya and Ajay having been embroiled in litigation; Atulya and Madhuri too having had serious disputes, it would only be reasonable to conclude that developments in the publicly accessible and searchable Register ought to have been to Atulya's knowledge. At the least, it would be reasonable to hold him to have had constructive notice of developments in a public register. No action having been taken for that long, it is not easy to accept Varun's simplistic

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contention that he got to know in 2023 and the period of delay should only be counted from his purported knowledge.

23. The provisions of the Limitation Act, 1963 ("***Limitation Act***"), addressed by each of the parties, bears analysis. Section 2 of the Limitation Act defines an "applicant" and an "application", and the "period of limitation". It provides as follows:

> *"2. Definitions.—*
>
> *In this Act, unless the context otherwise requires,—*
>
> *(a) "**applicant**" **includes**—*
>
> *(i) **a petitioner**;*
>
> *(ii) **any person from or through whom an applicant derives his right to apply**;*
>
> *(iii) any person whose estate is represented by the applicant as executor, administrator or other representative;*
>
> *(b) "**application**" includes a **petition**;*
>
> *(j) "**period of limitation**" means **the period of limitation prescribed for any** suit, appeal or **application by the Schedule**, and "**prescribed period**" means the **period of limitation computed in accordance with the provisions of this Act**;"*
>
> ***[Emphasis Supplied]***

24. On the face of the aforesaid provisions, a rectification application in the form of this Petition would be an "application" while the Petitioner would be an "applicant" for purposes of the Limitation Act. The period of limitation

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stipulated in the Limitation Act and the prescribed period would *prima facie* apply.

25. Section 3 of the Limitation Act bars an application made after the prescribed period. Section 5 of the Limitation Act permits admission of an application after the prescribed period on sufficient cause. Section 9 of the Limitation Act deals with continuous running of time while Section 16 deals with the death of a person before the right to apply accrues. Section 17 of the Limitation Act deals with the effect of fraud or mistake in computing the period of limitation. These provisions are extracted below:

> *"3. Bar of limitation.—*
>
> *(1) Subject to the provisions contained in sections 4 to 24 (inclusive), **every** suit instituted, appeal preferred, and **application made after the prescribed period shall be dismissed**, although limitation has not been set up as a defence.*
>
> *(2) For the purposes of this Act,—*
>
> *(a) a suit is instituted,—*
>
> *(i) in an ordinary case, when the plaint is presented to the proper officer;*
>
> *(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and*
>
> *(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;*

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(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

[Emphasis Supplied]

"5. Extension of prescribed period in certain cases.—

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

[Emphasis Supplied]

"9. Continuous running of time.—

Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."

[Emphasis Supplied]

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"16. Effect of death on or before the accrual of the right to sue.—

(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or make such application.

(3) Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office."

[Emphasis Supplied]

"17. Effect of fraud or mistake.—

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

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(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

[Emphasis Supplied]

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26. It will be seen that Section 3 prohibits entertaining any application after the prescribed period regardless of whether limitation is taken up as a defence. On the other hand, Section 5 (to which Section 3 is subject) permits entertaining an application after the prescribed period if the applicant satisfies the Court that there was sufficient cause for not preferring the application within such prescribed period. Under Section 9, when the period of limitation starts to run, a subsequent disability or inability to institute an application would not stop the march of limitation.

27. Section 16 deals with the effect of death of a person who would have earned a right to sue had he been alive – the period of limitation would be computed only when there is a legal representative of the deceased who is capable of making the application. In other words, if the person who would have had a right to apply dies, the limitation period would be counted only from the time the legal representative becomes available. Likewise, when a person who could be sued pursuant to a cause of action dies, the period would be counted only after the legal representative is available to be sued.

28. Finally, where an application is based upon fraud by the respondent, or the knowledge of the right or title on which the application is founded is concealed by fraud, or any document necessary to establish such right is

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fraudulently concealed, the period of limitation would begin to run only after the fraud is discovered or could have been discovered with reasonable diligence. In the case of a fraudulently concealed document, the time would run from the time the applicant had the means of producing the concealed document or compelling its production. Section 17 also protects a third party from any proceedings to set aside any transaction affecting any property purchased for valuable consideration without knowledge or reason to believe that fraud was committed. Similarly, a person who did not have knowledge of concealment of a document or was not party to the concealment is protected.

29. Varun's rectification application is founded on the purported oral family arrangement being violated by a transfer to a third party. What is noteworthy is that Varun has pleaded that the Mafatlal Group's original founder Mafatlal Gagalbhai died in 1964 and the group split into three in 1979 – each headed by one grandson. The matter in hand concerns the group under Mr. Yogindra Mafatlal, also called the Sungrace Mafatlal Group. Mr. Yogindra Mafatlal died in 2005 and his spouse Madhuri and her offspring are said to have run the businesses of that group. Yet, the application to register the Marks would only be made in 2011 by Madhuri, six years after the demise of Mr. Yogindra Mafatlal. By this time, Varun would have been about 22 years of age, but he

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has not pleaded that he was party to the family settlement but certainly he has pleaded that Atulya was a party to it.

30. What this means is that Varun's right to apply for rectification is derived from his being Atulya's son. His right cannot be higher than what Atulya enjoyed during his lifetime. As stated above, Atulya and his siblings were embroiled in litigation about succession to the assets of the Yogindra Mafatlal Group and they would have been expected to have been vigilant about their interests. The registration in Madhuri's favour came about during Atulya's lifetime even if after Madhuri's death. The Madhuri Will purports to have bequeathed the Class 24 Mark to Ajay and is silent about the Class 25 Mark. The Ajay Will purports to have bequeathed Ajay's properties to Gayatri and Malavika. Gayatri is said to have relinquished her interest, and on the strength of these instruments, Malavika came to be recorded as the registrant in July 2018 and her assignment of the Marks to Chandak led to his being the registrant in September 2018. These are the two registrations that Varun assails, seeking to reinstate the registration to Madhuri's name.

31. Varun claims through Atulya and all the aforesaid events occurred during Atulya's lifetime without Atulya having taken any action to assert any right over the Marks. In my opinion, the cause of action inherited by Varun

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would bring with it the attendant shortcomings and erosions it has already suffered during Atulya's lifetime. Every time the next generation purports to have inherited a cause of action, it would not be open and permissible to start from scratch on the premise that the generation that has decided to litigate was personally unaware of certain facts and that the clock would be reset for that generation.

32. Varun's contention today is that the Madhuri Will and the Ajay Will are inherently fraudulent since neither is mentioned in Suit 685 and on the basis of the infirmities pointed out in reliance placed upon these Wills in Malavika's engagement with the Registrar. The cause of action pursued today is therefore purported to be founded on the fraud alleged on her part along with Chandak. Against this backdrop, one has to also be mindful that Atulya is not around today to explain his silence during his lifetime. One can neither presume that he consciously chose to remain quiet nor that he was unaware. What one can reasonably infer is that men of commerce, purporting to defend a family legacy by preservation of the Marks, were engaged in litigation against one another over claims to that very legacy.

33. It is in context that Atulya would necessarily be expected to have exercised diligence to keep himself abreast with developments over the Marks,

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their registration in Madhuri's name, recognition of Malavika's ownership and thereafter to Chandak. At the least, in his capacity as a party to the purported oral family settlement, Atulya would have been expected to have exercised reasonable diligence over the Register of Trade Marks. When Madhuri died, the family members were actively litigating against one another. Therefore, taking the contentions about the Madhuri Will and the Ajay Will and the Deed of Assignment at the highest i.e. that they were all instrumentalities of fraud, in my opinion, one of the core elements of Section 17 of the Limitation Act, namely, that Atulya, with reasonable diligence, could have discovered it, would have to be given weightage. Atulya passed away in September 2022 and Varun has filed this Petition in December 2023, contending that he got to know about these instruments in August 2023. This contention cannot be lightly accepted to wipe out the limitation period already undergone in Atulya's hands, through whom Varun claims. One cannot place Varun on a higher pedestal than Atulya and permit ever-greening of limitation with every succeeding generation.

34. Indeed, the record also shows that Mafatlal Industries issued a legal notice to Chandak in 2015, aggrieved as a member of the wider Mafatlal Family, by his usage of the Marks which was said to injure their interests. Having been told by Chandak that he has legitimate licenses granted by

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Yogindra Mafatlal family, one would have expected Mafatlal Industries too to have kept vigil over the movement of record of title in the Register of Trade Marks. It would only be reasonable to expect that a branch that separated way back in the 1970s and is aggrieved by use of the Mafatlal name by Chandak, would have exercised reasonable diligence and alerted Atulya. It would be more reasonable than not, to expect members of the Arvind Mafatlal Group to have cautioned the warring members of the Yogindra Mafatlal Group that they were losing value to outsiders in the course of their disputes. This is precisely what Varun claims they did but in August 2023, as neighbours living in the same bungalow. Taking a holistic view of the matter, I am not satisfied that Varun can be held to have overcome the limitation already suffered by Atulya before his demise.

35. There is one other factual development that makes Atulya's diligence relevant – the Registrar advertised Madhuri's applications on December 12, 2016 and March 13, 2017. This was yet another trigger for Atulya to examine the matter and even object to the registration by asserting his own interest in the Marks and by asserting that the original instruments that form the basis of the registration ought to be examined. Every objection that is now sought to be raised could have been raised then because to his knowledge, Madhuri died in 2013. Yet, he did nothing then. He could have conducted a search on the

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Register. It does not appeal to me to permit Varun to overcome this silence and complete lack of diligence on Atulya's part, when Varun's interest and claim is through Atulya. Separately, Malavika claims to have shared the royalties earned from the Marks with Atulya until she learnt about the Madhuri Will and the Ajay Will in 2015. Malavika pleads that, during the negotiations, Atulya insisted on a division of the royalties received after Ajay's demise. Even if one were discount this contention fully, Atulya had adequate opportunities to be diligent and claim an interest in the Marks, and that too when Varun claims that Atulya was party to the oral family arrangement to have the Marks registered in Madhuri's name.

36. The Marks also were scheduled to expire in 2021 and were renewed, this time in Chandak's name with an advertisement of the renewal, for another ten years. The advertisement of the renewal proposals was effected in 2020 and Atulya did not initiate any opposition then too. To permit Varun to now contend that all this means nothing would run counter to the very import of Section 17 of the Limitation Act.

37. The Petition is therefore hit by extraordinary delay in asserting Atulya's rights, which were already barred by limitation. The allegation of fraud against the Madhuri Will, the Ajay Will and the Deed of Assignment do not, in

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my judgement, turn the needle in Varun's favour. Atulya could reasonably be said to have acquiesced or waived by continuing to suffer the erosion in his interests. I am not convinced that Varun can reset the clock on the basis of his personal discoveries in 2023 even while the very foundation of his claim is based on his father Atulya's purported oral family settlement.

38. As regards Article 137 in the Schedule to the Limitation Act, the prescribed period of limitation is three years from when the right to apply accrues. The right to apply sought to be pursued by Varun is the right that Atulya had, to apply for rectification. If that right had expired with time during Atulya's lifetime, merely on the basis that Varun personally got to know later, the limitation clock would not stand reset.

39. Before parting with this facet of the judgement, a word about Chandak's engagement with the Yogindra Mafatlal family in the use of the Marks would be in order. Chandak has contended that he was licensee for manufacture from Sungrace Mafatlal Group between 1998 and 2018, placing reliance on a list of 21 agreements. These agreements are for manufacture of designated metre length of fabric by Chandak for royalty paid to members of the Yogindra Mafatlal family, and are brokered by Choksi.

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40. Licenses from Ajay to Rahul Syntex (Chandak) are seen from the record (for example, an agreement in 2012). Malavika, who pleads that she was never in business, too issued licenses and collected funds from Chandak (for example, a license agreement of January 24, 2016, which purports to record that Malavika inherited the Marks pursuant to the Ajay Will and that Gayatri had relinquished her interest in the Marks on December 7, 2015). If such earnings by Ajay and Malavika were encumbrances over the family silver, it would have been for Atulya to sue for it – more so when Suit 685 had been instituted by Malavika and Gayatri to protect Ajay's interests from Atulya.

Due Process by the Registrar:

41. When it is held that Varun's grievance is not worthy of consideration by this Court, arguably, the matter should end there and then. However, the facts discernible from the record necessitate examining the conduct of the Registrar. It must be mentioned at the threshold in this segment of the judgement that the jurisdiction involved is not simply one of a civil court that adjudicates bilateral disputes as pleaded. Section 57(4) of the TM Act empowers the Registrar and this Court to also exercise suo motu powers to effect rectification. The very basis of such a power is to ensure that integrity of the Register is preserved. Integrity of the Register of Trade Marks can only be ensured by the integrity of due process followed by the Registrar.

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42. Therefore, I think it necessary to examine how the Registrar has conducted itself in the matter, particularly bearing in mind that an application for registration made in 2011 translated into registration in 2017 after the death of the applicant in 2013, of which the Registrar had notice in 2015. The 2015 Applications continue on the docket of the Registrar without any orders, even while applications made in 2018 have been processed and approved without any order being discernible from the record and without any indication of disposal of the 2015 Applications as having been overtaken or rendered infructuous. This necessitates a closer examination of what transpired without simply closing the file completely upon finding that Varun cannot pursue the captioned Petition.

43. What stands out in this case is the fact that an applicant for registration of the Marks was dead when the Registrar granted the registration, with the knowledge that the applicant is dead. Neither side has any explanation for this and indeed the Registrar has chosen to stay away from these proceedings. It is not as if the eventuality of an applicant dying before grant of registration is not contemplated in the law – Rule 55 of the 2017 Rules provides as follows:

> *"55. Death of applicant before registration.—*
>
> *In case of death of any applicant for the registration of a trademark after the date of his application and before the trademark has been entered in the register, the*

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Registrar may, on request on form TM-M and on proof of the applicant's death and on proof of the transmission of the interest of the deceased person, substitute in the application, the name of successor in interest in place of the name of such deceased applicant, and the application may proceed thereafter as so amended."

[Emphasis Supplied]

44. What is noteworthy is that when the 2015 Applications were filed to intimate the Registrar about the death of Madhuri, the 2002 Rules held the field – Rule 61 of the 2002 Rules read thus:

"Death of Applicant before Registration

61. In case of death of any applicant for the registration of a trade mark after the date of his application and before the trade mark has been entered in the register, the Registrar may, on proof of the applicant's death and on proof of the transmission of the interest of the deceased person, substitute in the application his successor in interest in place of the name of such deceased applicant and the application may proceed thereafter as so amended."

[Emphasis Supplied]

45. It will be seen that the position in law was identical except for the insertion of a requirement to file an application in Form TM-M (miscellaneous) to bring on record the name of the successor in interest. When the 2015 Applications were filed, the Registrar had to be satisfied with proof of the death and proof of the transmission of interest, and substitute the name of the successor in interest in the application. It is only *thereafter* that the application may proceed after being so amended. When the Marks were

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registered in 2017, Madhuri was long dead but the registration certificates were clearly issued "*in the name of*" Madhuri. Chandak claims that these provisions are only enabling empowering provisions that the Registrar is not required to follow – this does not sound logical at all. Indeed the Registrar *may* substitute the applicant's name but only on receipt of proof. If there is no proof, he may not effect such substitution. The provision if read as one conferring a power, it is a provision that entails a power coupled with duty to be satisfied with proof to process the application of a dead person any further.

46. There was not even a substitution of the name of the successor in interest in the application. In other words, the very original registration that Varun seeks to retain is a registration that was effected in the name of a dead person, despite proof of death having been on the Registrar's record and without anything to evidence examination of proof of succession in interest and substitution of the name of the successor in interest upon examination of proof of the successor in interest. Worse, without any substitution, the registration in Madhuri's name was granted in 2017 and soon thereafter, the transfers to Malavika and from Malavika to Chandak took place in 2018 in rapid succession.

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47. Indeed, it is contended on behalf of Chandak that this should not matter since registration of a mark always relates back to the date of application. This contention is disingenuous since it would then mean that any registration can be effected in the name of a dead person, on the ground that the dead applicant was alive when the application was made. This makes a mockery of the need for an existing live person to be a "proprietor" of a mark proposed to be registered. It is not anybody's case that any letters of administration were issued or that any executor of the Madhuri Will or the Ajay Will sought registration in the name of Madhuri's estate. Madhuri's application of 2011 was simply granted in 2017 well after her demise, with the registration being effected in her name.

48. By the approach of giving Rule 55 of the 2017 Rules (or Rule 61 of the 2002 Rules) a go-by and by leapfrogging to the operation of Rule 75 read with Rule 76 of the 2017 Rules, the Registrar has simply side-stepped the issue of whether a dead applicant can be granted registration. Even under Rule 76 of the 2017 Rules, the person applying must file a duly certified copy of the original document purporting to transfer title to the applicant in the registered mark. The shortcomings in the 2015 Applications come later but with notice of the death of Mathuri, the applicant, the import of Rule 55 has been sidestepped to grant registration to a dead person.

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49. Chandak contends that Rule 55 is enabling provision and can be safely ignored. I am not able to accept this suggestion – clearly, in the run up to registration, the law-writer has envisaged the situation of the potential death of the applicant before registration and has provided a framework to deal with it. That framework cannot be wished away as a discretionary power that need not be exercised at the whim of the Registrar – as indicated above it is a power coupled with a duty.

50. This led to the position that invoking Section 45 of the TM Act and Rule 77 of the 2017 Rules, the Registrar could simply state that there was no serious doubt arising from the documents before him to demand any additional proof. This has been possible because without a live person backing the applications made in 2011 by Madhuri, despite the pendency of the 2015 Applications, the current situation has come about. This, to my mind, raises reasonable doubt about the integrity of the Register. In a succession dispute that is fraught with deep fissures and internecine disputes, registration of the Marks came to be granted to a dead person.

51. A dead person cannot sustain an application. In fact, the 2015 Applications were filed in Form TM-16 under the 2002 Rules, which is essentially a form to correct clerical mistakes before grant of registration.

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There is no specific form stipulated for an application under Rule 61 of the 2002 Rules. There is not a whisper of how the 2015 Applications were handled. It is after Madhuri's name being entered into the Register in 2017 well after her demise in 2013 that another application by Malavika filed in May 2018 was granted in July 2018 to bring Malavika's name as the successor of the registered mark. Soon after that, based on the Deed of Assignment, Chandak's application was allowed to make him the registered owner of the Marks.

52. Rule 61 of the 2002 Rules and Rule 55 of the 2017 Rules clearly require the Registrar to be satisfied with the proof of the death and the proof the succession in interest of the substitute applicant. There is nothing to show that this process was at all followed. Instead, the application was processed without any substitution – clearly in violation of the scheme of the law, leading to the absurdity of grant of registration to a person known to be dead. The recognition of Malavika would come later as a successor in interest to the registered Marks and of Chandak as an assignee from Malavika. This is precisely what is wrong with due process and integrity of the Register.

53. Indeed, I have held that it does not lie in Varun's hands to pursue rectification proceedings. Equally, what Varun desires is to sustain the

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registration in Madhuri's name and only rectify the entries in Malavika's and Chandak's names. On the other hand, when I examine the record and the conduct of how the Register has been handled, I am afraid that the very foundational registration in Madhuri's name appears infirm. While this matter could have been closed with the rejection of Varun's Petition, it cannot lose sight of the fact that the integrity of the Register being sacrosanct, and the legislature having given the power of a *suo motu* rectification by the Court, it is the integrity of the Register that is the intended beneficial objective.

54. Section 45 of the TM Act deals with grant of registration to a person who becomes entitled to the registered mark pursuant to an assignment or transmission. Section 45 of the TM Act read with Rule 77 of the 2017 Rules empowers the Registrar to seek evidence or further evidence where there is any doubt as to the veracity of the documents or information provided. Arguably there was considerable doubt that would have emerged from the documents presented in the 2015 Applications – the absence of the Ajay Will although referred to in the Gayatri Undertaking and that too with the date being blank. This is more so because Gayatri is one of the named executors in the Madhuri Will. The other executor is her husband Priyam Jhaveri. The Ajay Will names two executors Shanay Jhaveri and one Mr. Bhavesh Parmar. Without even getting into whether the Registrar is a "Court" for purposes of

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the Succession Act (on which copious competing submissions have been made), the least the Registrar ought to have done is to satisfy himself about the succession in interest by calling upon the executors to confirm the position.

55. Strangely, while this should have been done in response to the 2015 Applications, the Registrar proceeded to register the Marks in the name of a dead person two years later, with nothing to indicate an adjudication of the 2015 Applications. By simply not dealing with it, the key round of validation was not even dealt with and the problematic position was leapfrogged over to give registration to the late Madhuri and to then process the new Form TM-P from each of Malavika and Chandak in 2018 as if the Registrar was simply dealing with the validly existing Marks.

56. What is also noteworthy is that the Madhuri Will lists only one of the Marks as being bequeathed to Ajay – the "*Trade Mark of Sungrace Mafatlal bearing No. 2081790 validly registered in my name*" in Paragraph 6(e) as a moveable asset of Madhuri. Registration of that Mark had still been pending and it had not been registered. That apart the other Mark does not seem to be part of the Madhuri Will and therefore one wonders how the Ajay Will could

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have been the basis of contending that it was available for Malavika to assign to Chandak.

57. Malavika admits to having received royalties from Chandak as a licensee and consideration of Rs. 9 lakh per Mark for the assignment to Chandak even while contending that she knows nothing about business operations and needed funds for her medical expenses. The Madhuri Will and the Ajay Will are admittedly not probated and no testamentary proceedings have been taken up or are pending in relation to either Will.

58. Mr. Jagtiani has made submissions, among others, to the effect that the power to *suo motu* rectify a registration being available only to deal with situations where the registration is *per se* illegal. *Prima facie*, granting registration of a trade mark to a dead person falls in that category. That apart, all contentions on merits will be available when the parties deal with the notice under the *suo motu* rectification proceedings.

Summary of Conclusions:

59. To summarise, my conclusions on the points for determination are:

A] Varun must indeed be regarded as a "person aggrieved". Whether his contentions in the Petition are tenable and whether the Court ought to make any intervention at his request is a matter of merits or delay,

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acquiescence, waiver and limitation. On the core issue of whether Varun has skin in the game from the limited perspective of being regarded as a person capable of being aggrieved by the registration of the Marks, my finding is that Varun is to be regarded as a person aggrieved;

B] On the facet of delay and limitation, in my view, Varun can only claim through Atulya, who would in turn have had the capacity to claim through Madhuri. It is Varun's own contention that the purported oral family settlement (also involving Atulya) necessitated Madhuri applying for registration and indeed Madhuri had applied for it. Varun's own pleadings indicate that he lives in the same 'Mafatlal Bungalow' where the Arvind Mafatlal family branch also lives and that he got to know about the registrations in Chandak's name from them, in August 2023. If Atulya chose not to seek rectification, with him died the cause of action in furtherance of rectification. If Varun inherited the right to sue, he inherited it with all the drawbacks and erosion of the cause of action that took place under Atulya's watch. Atulya having passed away, there is no positive evidence possible about the quality of the cause of action in his hands, for the strength of Varun's purported cause of action to be inferred. The cause of action to seek rectification cannot spring back to

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life from scratch for every successive generation, claiming to have discovered the cause of action;

C] Under Section 2(a)(ii) of the Limitation Act, an applicant includes a person from or through whom the applicant derives the right to apply. Varun derives his right through Atulya. The period for an application under Section 57 of the TM Act is three years under Article 137 of the Schedule to the Limitation Act. Time began to run when the entries in favour of Malavika (July 5, 2018) and Chandak (September 17, 2018) were made in a Register open to public search. It expired in July and September 2021. Atulya was alive and took no step. Section 9 of the Limitation Act provides that, once time has begun to run, no subsequent disability stops it. Section 16 does not assist Varun, since time had begun to run and ran its course before Atulya died in September 2022. Varun cannot restart the clock on the footing of his own discovery in August 2023. Section 17 of the Limitation Act does not postpone the start of limitation. The family members were embroiled in litigation with one another. The Registrar advertised Madhuri's applications on December 12, 2016 and March 13, 2017, and the renewals in 2020. Atulya, with reasonable diligence, could have discovered the entries. His silence is also acquiescence and waiver. Varun, as his successor, cannot

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undo it. Sufficient cause under Section 5 of the Limitation Act is not made out. The Condonation IA fails and the Petition is barred by limitation – that is without the need for any finding on the title to the Marks or on the validity of the Madhuri Will and the Ajay Will;

D] The integrity of the Register of Trade Marks is suspect on the face of the record. The entire history of registration of the Marks is replete with inexplicable events. The original applicant, Madhuri died well before registration was granted. Information about her death was officially recorded in the systems of the Registrar by December 2015, when Malavika filed the Madhuri Will. Any reasonable officer in the Registry would have desired to know and appreciate the precise status of the legacy. Despite all the wherewithal provided for in the 2002 Rules and in the 2017 Rules, there is nothing to show that the Registrar satisfied himself about the successor in interest to the application for registration of the Marks. Regardless of Varun's claims and attempt to displace the registration in favour of Chandak and Malavika, in my view, Madhuri's own registration is suspect, having been effected well after her death, despite knowledge of her death, and it being a matter of public record that Madhuri's offspring were fighting tooth and nail on various fronts; and

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E] The least expected of the Registrar is that he ought to have discharged the duty of ascertaining the precise status. The provisions of Rule 55 of the 2017 Rules and Rule 61 of the 2002 Rules entail a power coupled with duty to use such power to ascertain the position. After all, the record of title to intellectual property maintained by the Registrar is meant to give public confidence in the record of ownership of intellectual property in India. Therefore, I am inclined to initiate suo motu rectification proceedings in exercise of powers under Section 57(4) of the TM Act to consider rectification of the registration from scratch and delete even Madhuri's name from the Register, since evidently, it has been registered after her death, with scant enquiry into whether it was being pursued by genuine legal heirs.

Directions:

60. Therefore, I am of the view that this case is *prima facie* a fit case for issuance of notice by the Court on its own motion asking the current registrant i.e. Chandak, the immediately preceding registrant i.e. Malavika and the estate of Madhuri (the two named executors in the Madhuri Will) – collectively, "***the Noticees***" – as to why the registration originally granted to a dead person (Madhuri) in 2017 should not be cancelled. The Noticees shall also explain

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how the Class 25 Mark, which is not even alluded to in the Madhuri Will could be treated as having vested in Ajay and then to Malavika, for the assignment to Chandak to be valid.

61. Pending such proceedings, *prima facie*, it appears appropriate to consider a stay on the operation of the statutory protection available pursuant to the registration. However, I think it appropriate to enable the Noticees to also show cause as to why such interim injunction should not be issued. The Noticees' reply showing cause shall also set out in a separate segment why the effect of registration should not be stayed pending hearing and disposal of the rectification proceedings.

62. The Noticees shall also justify their reliance on the Madhuri Will and the Ajay Will in defence of their registrations, particularly in view of the infirmities pointed out in this judgement. Having rejected Varun's Petition, I am not ruling on the questions of law raised under the Succession Act in relation to the Wills. However, depending on the replies from the Noticees, questions of law under the Succession Act shall be considered.

63. The Noticees' replies shall be filed by way of an affidavit along with any evidence to substantiate the replies, ***no later than January 15, 2027***. This High Court does not have rules governing the procedure to be followed and it is only

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appropriate that the minimum standards in subordinate law under the TM Act is followed. Rule 100 of the 2017 Rules provide for a minimum of one month's notice period and I have provided for nearly two months' notice period, considering the intervening holiday season.

64. Inexplicably, when all the contentions of the parties in the dispute are about the conduct of the Registrar, there is not even a whisper of participation by the Registrar in these proceedings. My view has usually been to let orders of the Registrar speak for themselves but in this case, there is no reasoned order on the file. This calls for issuance of certain directions in relation to the Registrar. This judgement shall be sent by the Registry of this Court to the Office of Controller General of Patents, Designs and Trade Marks, with a direction to call for the files and records in this matter right from the first application made on behalf of Madhuri in 2011 till date. The Controller General shall cause the files to be independently studied by a senior responsible officer who has not handled any facet of this case until now, and such officer shall file an affidavit to explain how the course of conduct adopted by the Registry has come about.

65. Such affidavit shall set out particulars of how the Registry handles cases where an applicant being a natural person has died before grant of registration

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and whether the Registry has any internal manual or standard operating procedure to deal with such situations. Statistics indicating in how many cases, registration has been granted to the knowledge of the Registrar, in the name of a dead person in the past ten years, shall also be compiled and presented. Such affidavit too shall be filed no later than ***January 15, 2027***.

66. With the aforesaid directions, the captioned Petition is ***finally disposed of***.

67. The Registry of this Court shall register a new *suo motu* Commercial Miscellaneous Petition pursuant to this judgement as a *suo motu* initiation of rectification proceedings under Section 57(4) of the TM Act, and update the file with the replies from the Noticees and from the Officer of the Controller General. List such Suo Motu Petition under the caption "***For Directions***" on ***January 20, 2027***.

68. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]

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