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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10037/2017& CM No.40954/2017**

M/S KAMDHENU CATTLE FEEDS PVT LTD Petitioner

Through: Mr Shailen Bhatia, Ms Ekta Nayar
Saini and Ms Priyanka Anand,
Advocates.

versus

CONTROLLER-GENERAL OF PATENTS, DESIGNS
& TRADE MARKS AND ORS Respondents

Through: Mr Kirtiman Singh, Mr Waize Ali
Noor, Advocates for R-1.
Ms Vaishali Mittal and Mr Siddhant
Chamola, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.12.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 20.10.2017 (hereafter 'the impugned order') passed by the concerned officer from the Registrar of Trademarks (hereafter 'the Registrar'), whereby the name of the petitioner as the proprietor of the registered Trademark no. 597524 in class 31 was removed and the said trademark was registered in the name of respondent no.3 (hereafter 'Kapila').

2. The petitioner states that it had adopted the trademark/label 'KAPILA PASHU AHAR' (hereafter 'the said trademark') for cattle feed on 11.07.1992. The petitioner thereafter applied for registration of the said

trademark in class 31 by an application dated 18.05.1993 (which was numbered as 597524). The said trademark was subsequently registered in the name of the petitioner.

3. The petitioner claims that it had entered into an agreement of co-ownership of the Brand and Trademark with Kapila on 17.05.2014, which was terminated by the petitioner on 06.02.2016.

4. The petitioner states that it has also filed a suit in the District Court, Kanpur, which is pending.

5. Kapila filed a request in the Form TM-24 with the Trademark Registry on 28.03.2016 to record its name as the subsequent proprietor of the said trademark in question. The petitioner has filed an objection to the said request on 11.08.2016. Without considering the objections of the petitioner, Kapila's request was allowed by an order dated 04.07.2017 and Kapila was recorded as the subsequent proprietor of the said trademark. The petitioner states that it made a representation for recalling of the said order. Thereafter, realizing that Kapila had been recorded as the subsequent proprietor without considering the petitioner's objection to the said request, the order dated 04.07.2017 was cancelled and the petitioner was once again shown as the registered proprietor of the said trademark.

6. This Court is informed that thereafter Kapila filed a complaint against review of the order dated 04.07.2017, and consequently, by an order dated 20.10.2015 (impugned herein) Kapila was once again recorded as the subsequent proprietor in respect of the said trademark.

7. The petitioner states that, in the meanwhile, a hearing was fixed before the Assistant Registrar of Trademarks on 25.08.2017 for considering the petitioner's objection to Kapila's request for being recorded as the subsequent owner of the said trademark. The petitioner states that the said hearing was adjourned to 03.10.2017 and on that date it was further adjourned to 26.10.2017.

8. The principal grievances of the petitioner are: (i) that the impugned order has been passed by the junior officer (examiner of trademarks) while a senior officer was in seisin of the controversy; (ii) that the impugned order has been passed without hearing the petitioner; and (iii) that the impugned order has not been communicated to the petitioner.

9. It is in the aforesaid backdrop that the petitioner has filed the present petition.

10. Thus, the present petition was moved on 13.11.2017 and on that date, this Court was informed that a hearing has been fixed before the Trademark Registry on 16.11.2017 with regard to the petitioner's representation/objection to Kapila's request to be recorded as the subsequent owner of the said trademark in question.

11. In view of the aforesaid, this Court passed an order dated 13.11.2017, *inter alia*, directing as under:-

“3. Learned counsel for the parties point out that the hearing before the Registrar, Trademark is fixed on 16.11.2017. The Registrar shall consider all objections and pass a reasoned order before the next date of hearing uninfluenced by the fact that the Trademark is registered in the name of the respondent. This is

without prejudice to all rights and contentions of the parties including the petitioner's contention that the proceedings are illegal and incompetent.”

12. The learned counsel for the respondent has today handed over a copy of the order dated 15.12.2017, whereby it has been ordered that the name of Kapila remain on the Register of Trademarks as a subsequent proprietor of the said trademark till the High Court or any other Competent Court directs otherwise.

13. The learned counsel for the petitioner advanced contentions on two fronts. First, he submitted that the impugned order could not be sustained on the basis of an *ex post facto* hearing. He referred to the decision of a Coordinate Bench of this Court in ***Brakes International v. Tilak Raj Bagga: AIR 1998 Del. 146*** and the decision of the Constitution Bench of the Supreme Court in ***Maneka Gandhi v. Union of India: AIR 1978 SC 597*** in support of his contention.

14. Second, he drew the attention of this Court to the following passage from the order dated 15.12.2017:-

“Regarding the recordal of the subsequent proprietor of a trademark, if validity of assignment or transmission is in dispute between the parties, the Registrar of Trademarks ordinarily defers to record the same until the rights of parties are determined by competent Court; but in this case the request for assignment has already been allowed by the Registrar and KKUL has been brought on record as subsequent proprietor of the trademark and entry to this effect has been made in the Register of trademarks. Further, due to complaints and counter complaints the matter has been assigned to me and Hon’ble High Court of Delhi has also directed to “consider all

objections and pass a reasoned order” In view of these circumstances, I am under obligation to go into the merits of the case.”

15. He submitted that in view of the aforesaid, it was obvious that the order dated 13.11.2017 had not been complied with inasmuch as the Registrar was influenced by the fact that the said trademark had been registered in the name of Kapila.

16. It is seen from the order dated 15.12.2017 that the Registrar has examined the issue on merits and has concluded that Kapila ought to be recorded as the subsequent proprietor of the said trademark in question after considering the rival contentions. This Court’s order directing that the petitioner’s objection be considered uninfluenced by the fact that the said trademark had been registered in the name of Kapila was aimed towards ensuring that the concerned officer examines the issue on merits; and this has been done. The order dated 13.11.2017 cannot be read as a direction to the Registrar to completely ignore that the said trademark was registered in the name of Kapila. The import of this Court’s order was only to ensure that the Registrar passes an order uninfluenced by the earlier order passed registering the said trademark in the name of Kapila. This Court is unable to accept that the directions passed on 13.11.2017 have not been complied with.

17. The contention that the order dated 15.12.2017 registering the name of Kapila as a subsequent proprietor of the said trademark in question could not be sustained on the basis of an *ex post facto* hearing is not persuasive in the facts of the present case. In this case, the petitioner’s objection to record

Kapila as a subsequent proprietor was pending and it is in this context that the Registrar was directed to consider all objections and pass a reasoned order.

18. It is apparent from the above that the petitioner's contentions have been heard and decided by the Registrar and if the petitioner is aggrieved by the said order, the petitioner is at liberty to challenge the same in accordance with law.

19. In view of the above, the present petition is disposed of by reserving the petitioner's right to challenge the order dated 15.12.2017. The pending application also stands disposed of.

VIBHU BAKHRU, J

DECEMBER 19, 2017
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