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

+ **W.P.(C) 8801/2017 and CM APPL. 35978/2017**

DHARSHAN SINGH & ANR Petitioners

Through: Mr. N. Nawas, Advocate.

Versus

UNION OF INDIA & ORS Respondents

Through: Mr. Vinod Diwakar, CGSC with
Mr. Sanjay Pal, Advocate for R-1
& 2.
Mr. Sahani, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **30.01.2018**

1) This is a writ petition in which following substantive prayers are sought:

- (a) Quashing/setting aside the Impugned Order dated 02/11/2016 passed by the Ld. Registrar of Trademarks in regard to the Respondent No. 3's Request on Form TM-24 dated 01/07/2015 pertaining to the Registration No. 619329 in Class 25 for the trademark MADAAN; and / or
- (b) Directing the Hon'ble IPAB to hear the Appeal No. IPAB CASE NO.: SR.NO. 16/2017/TM/DEL and/ or at least the accompanying interim stay application and finally adjudicate the Petitioner No. 1's Appeal along with all pending Misc. Petitions by way of final hearing, within a stipulated time frame in time bound manner; and

2) Notice in this writ petition was issued on 27.9.2017. The notice was made returnable on 11.10.2017. On that date this Court set out the main grievance of the petitioners here.

3) It appears that the grievance of the petitioners is that respondent No. 2 had transferred the trademark 'Madaan' in favour of respondent No. 3, which according to them was registered in favour of the petitioner No. 1, respondent No. 3 and respondent No. 4, albeit, jointly.

4) The record shows that registration was carried out on 13.9.2002 pursuant to an application dated 11.2.1994 being moved in that behalf.

5) The petitioners also says that the said registration was renewed for a further period of 7 years on 11.2.2001.

5.1) It is also the case of the petitioners that the renewal took place, once again, on 11.2.2008.

6) It appears upon a request being made by respondent No. 3, in form TM-24, dated 1.7.2015, the trademark was transferred by respondent No. 2 in favour of respondent No. 3.

7) Concededly, no notice was issued to the petitioners with regard to the transfer being effected by respondent No. 2 in favour of the respondent No. 3.

8) Being aggrieved, the petitioners preferred an appeal with the Intellectual Property Appellate Board (in short "IPAB"). Since, the IPAB lacked quorum the instant Writ Petition was filed. This Court as indicated above via order dated 11.10.2017 crystalised the contentions advanced by the contesting parties.

9) As indicated above, the rub lies in respondent No. 2 registering the trademark in the sole name of respondent No. 3. I may also indicate that respondent No. 3 in defence of the order passed by respondent No. 2 relies upon a dissolution deed dated 1.4.1995.

9.1) Mr. Sahani, who appears for respondent No. 3 cannot but

argue whatever may be the other contentions available to the said respondent the principles of natural justice were not followed by respondent No. 2 in passing the impugned order.

9.2) Consequently Mr. Sahani cannot but argue that order dated 2.11.2016 needs to be set aside and matter be remanded to respondent No. 2 for a de novo hearing in this matter.

10) Having regarded what is stated above the order dated of 2.11.2016 is set aside. Respondent no. 2 is directed to apply his mind once again to the request made by respondent No. 3 for transfer of the subject trademark in his favour.

10.1) Respondent No. 3 before passing a fresh order shall hear the petitioners. Due notice with regard to the date time and venue of the hearing shall be given by respondent No. 2. Respondent No. 2 will complete the exercise as expeditiously as possible, though, not later than 3 months from today.

11) The logical corollary of the aforesaid directions would be that the appeal pending before the IPAB is rendered infructuous.

12) Needless to say pending the decision by respondent No. 2, as indicated above the interim order dated 11.10.2017 passed by this Court will continue to operate.

13) It is made clear that contesting parties will be free to advance all submissions on the merits of the case. It goes without saying that respondent No. 3 takes the stand that he does not admit that the petitioners are the owner of the said trademark.

14) The Writ Petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

JANUARY 30, 2018

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