

K.S. Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL MISCELLANEOUS PETITION NO.16 OF 2023

Nitori Holdings Co. Ltd.

...Petitioner

Versus

The Senior Examiner of Trade Marks, Mumbai

...Defendant

Mr. Karan Khiani a/w Aditya Mahadevia i/b Rashmi Singh, Advocate
for Petitioner.

Mr. Amogh Singh, Advocate for Respondent.

CORAM : R.I. CHAGLA, J.

DATE : 9TH JUNE, 2023.

ORDER :

1. By this Commercial Miscellaneous Petition, the Petitioner is impugning the order of the Respondent-the Senior Examiner of Trade Marks, Mumbai dated 2nd September, 2021 which has held that the Petitioner's mark is not registerable.

2. Mr. Karan Khiani for the Petitioner has submitted that the impugned order dated 2nd September, 2021 is without reasons and only refers to Section 9(1)(a) of the Trade Marks Act, 1999. Further,

there is a mere finding that “it has been observed that the subject mark has lack of distinctive feature and not able to differentiate the goods / services of Applicant from others.” There is a bare statement that there has been a perusal of documents on record and submissions made by the Applicant/Authorized Agent and upon which it is concluded that the applied mark is not registered because of the reasons as stated above, which are non-existent. He has accordingly submitted that the impugned order be set aside.

3. Mr. Amogh Singh has submitted to the orders of this Court.

4. Having perused the impugned order, I am of the view that the Respondent-the Senior Examiner of Trademark has neither recorded the submissions of the Petitioner nor given any finding on the submissions and / or material on record produced by the Petitioner. There is a mere reference to the provision of the Trademark Act, 1999. Further, there is bare statement that there is a perusal of documents on record and submissions made by the authorized agent and upon which it is concluded that applied mark is not registered. The only reason given in the impugned order is that there is an observation that the subject mark lacks distinctive feature and is not able to differentiate the goods / services of the

Applicant from others. Thus, the impugned order requires to be set aside and remanded back to the Respondent for consideration of the submissions of the Petitioner as well as the material on record and proper reasons to be given after such consideration. Accordingly, the following order is passed :

- (i) The Respondent's order dated 2nd September, 2021 is quashed and set aside.
- (ii) The matter is remanded back to the Respondent for hearing of the Petitioner and consideration of the submissions of the Petitioner as well as material on record and passing of a reasoned order which shall be carried out within a period of eight weeks from the date of this order.
- (iii) The Commercial Misc. Petition is accordingly disposed of.

[R.I. CHAGLA, J.]