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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 4th July, 2023Date of decision: 6th July, 2023

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C.A.(COMM.IPD-TM) 66/2021

KAMDHENU LTD

..... Appellant

Through: Mr. Sudarshan Kumar Bansal, Mr. Nikhil Sonker, Advocates (M-7417478967).

versus

THE REGISTRAR OF TRADE MARKS

..... Respondent

Through: Mr. Harish V. Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

[This judgment has been pronounced through hybrid mode]

1. The present appeal has been filed by the Appellant-M/s Kamdhenu Ltd. under Section 91(1) of the Trade Marks Act, 1999 (*hereinafter, 'the 1999 Act'*) challenging the impugned order dated 23rd April 2019 passed by the Respondent No. 1-Registrar of Trade Marks, New Delhi (*hereinafter, 'the Registrar'*) under Rule 124 of the Trade Mark Rules, 2017 (*'hereinafter, 2017 Rules'*).

Background

2. By the impugned order, the Application bearing no. **'TM-M 764900'** dated 17th August 2017 (*hereinafter, 'the Application'*) filed by the Appellant, seeking inclusion of the trademark **'KAMDHENU'** in the List of Well-Known Trademarks, was rejected by the Registrar.



3. The primary reason given by the Registrar for rejecting the grant of the Application is that the Appellant failed to provide evidence of the well-known status of the mark by way of an affidavit. The operative portion of the impugned order is set out below:

“1. Applicant has not submitted any evidence on affidavit so it is noted that determination of the well-known status cannot be done under provision of sec. 11 (6) or (7) of the TM Act, 1999.

2. Ld. Counsel replied on the decision of the courts / tribunal. The referred cases are –

(1) Before the Registrar in matter of Application No. 617634 & 617636 in the name of Khoday Eshwarsa & Sons, Bangalore vs. Opposition No. 735484 & 735485 thereto by Kamdhenu Ispat Limited and Application No. 1380683 of M/s Pragati primary Milk Products vs. Opposition No. 719115 thereto by Ms. Kamdhenu Ispat Limited (2) Order of the High Court in CS (OS) 2564 of 2015 (M/s Kamdhenu vs. Ms. Pragati Primary Milk Products), and (3) In CS (OS) No. 1204 of 2004 (Kamdhenu Ispat Limited vs. Kamdhenu Metal).

It is noted from the decision of the registrar in the matter of Khoday Eshwarsa & Sons, Bangalore vs. Kamdhenu Ispat Limited. In this matter although a reference is made in regard to well-known status of the mark Kamdhenu but the same was not been determined but it is simply a passing reference. Neither any issue as to well known status of the mark was raised nor was it contested nor any material was appreciated by the Registrar for determination of the trademark as well known trademark.

In the matter of M/s Pragati primary Milk Products vs. Kamdhenu Ispat Limited, the Registrar has discussed the issue of well-known TM in length and observed that "... Kamdhenu is a common dictionary word and it has been registered in respect of various other products by other proprietors. In such circumstances, I am not inclined to



hold that that opponent's mark 'KAMDHENU' has been so well-known to the substantial segment of public."

A reference was also made of the decision of the Hon'ble High court of Delhi in the matter of Kamdhenu Ispat Limited vs. Kamdhenu Metal; CS (OS) No. 1204 of 2004 where injunction was granted on the basis of deceptive similarity of the mark under question and the basis of engagement of the plaintiff in the same field of activities of the plaintiff. The Hon'ble court has nowhere observed or determined Kamdhenu as a well-Known trademark.

Another reference was made of the Hon'ble High court of Delhi in the matter of Kamdhenu Ispat Limited vs. Pragati Primary Milk Products; CS (OS) 2564 of 2015 wherein an ad interim injunction was allowed in favour of the plaintiff but the Hon'ble court has not observed Kamdhenu as a well-known trademark although a reference as such was made in the submissions by the Ld. Counsel for the plaintiff.

In view of above, the Tribunal observes that the Trade Mark 'KAMDHENU' cannot be considered to be a fit mark for inclusion in the list of well-Known trademarks in accordance with provisions of rule 124 of The Trade Marks Rules, 2017. The Present petition is accordingly disposed off.

Signed and Sealed at Mumbai dated this 23rd day of April, 2019., "

4. The Appellant, initially preferred an appeal before the Intellectual Property Appellate Board ('IPAB') in 2019. Following the abolition of the IPAB, and after the enactment of Tribunal Reforms Act, 2021 the appeal was been transferred to this Court in 2021.

5. The Appellant's case is that the company, initially incorporated as Kamdhenu Ispat Limited, changed its name to Kamdhenu Limited with effect from 27th January, 2016 vide Certificate of Incorporation issued by the Registrar of Companies. The Appellant claims to be the owner and



proprietor of the trademark '*KAMDHENU*' in relation to various goods and services. The mark '*KAMDHENU*' is stated to be adopted in the year 1994, and has been used on goods such as TMT steel bars, and various other construction-related materials such as structural steel, plywood, PVC pipes, allied goods, plaster of paris, Water Proofing Compounds, Wall Putty etc. The Appellant also claims that it has expanded its business over the years, venturing into milk, dairy products, mineral water, paint, real estate, etc. and other businesses. The said expansion has taken place over several years since 1994, and is set out in a tabulated form in paragraph 4 of the appeal:

No.	Name	Goods	Date
1	KAMDHENU TMT	TMT Bars.	1994
2	KAMDHENU CEMENT	Cement.	2005
3	KAMDHENU POP	POP	2006
4	KAMDHENU HOMZ	Real Estate.	2006
5	KAMDHENU WIRE BOND	Wire Bond.	2006
6	KAMDHENU PLYWOOD	Plywood	2007
7	KAMDHENU STRUCTURAL STEEL	Structural Steel.	2007
8	KAMDHENU COLOUR DERAMZ	Paints.	2008
9	KAMDHENU MILK	Milk.	2008
10	KAMDHENU PVC	PVC Pipes.	2008
11	KAMDHENU CONSTRUCTION CHEMICALS	Construction Chemicals.	2009
12	KAMDHENU FRESH	Mineral water.	2009
13	KAMDHENU SS10000	Premium TMT	2013
14	KAMDHENU SHEETS	Colour Coated Sheets	2014
15	KAMDHENU NXT	TMT Bars	2017

6. The Appellant also claims to have filed and registered several trademarks, including copyright registrations for the mark '*KAMDHENU*' in various classes. The '*KAMDHENU*' mark prominently features in the



domain name www.kamdhenulimited.com, which is used as a website to promote and advertise the Appellant's business and goods.

7. The Appellant further asserts that it has a dealership network of over 8500 dealers and produces 25 lakhs metric tons of steel bars and structural steels annually. In view of the enormous goodwill which it enjoys, and diversification into various businesses, the Appellant intended to seek well-known status, and accordingly filed an Application before the Trademark Registry seeking declaration as a '**well-known mark**' under Section 11(8) of the 1999 Act and Rule 124 of the 2017 Rules.

8. The Application was filed by the Appellant under Form TM-M of the 2017 Rules on 17th August, 2017. Along with the Application, various supporting documents, such as judicial orders recognising the Kamdhenu brand as a well-known mark, were also filed. Newspaper advertisements, contracts, invoices, media-related documents, and a list of successful cases where the Appellant obtained an injunction in respect of the '**KAMDHENU**' mark were also placed on record. A hearing also took place on 22nd February 2018 before the Id. Deputy Registrar of Trade Marks and GI. However, by the impugned order, the Application for inclusion in the list of well-known trade marks was rejected.

Submissions

9. Mr. Sudarshan Bansal, Id. Counsel appearing for the Appellant submits that the Registrar's approach was totally erroneous, as the primary ground on which the Application had been rejected was due to the non-filing of evidence by way of an affidavit. It is submitted that under Rule 124 of the 2017 Rules, it is not mandatory for the Applicant to file evidence only by way of affidavit. The Appellant had filed several documents in support of



their claim for well-known status for its mark '*KAMDHENU*'. He further relies upon Rules 80, 86, 95, 96 and Rule 45 of the 2017 Rules to argue that when the 1999 Act and the 2017 Rules require evidence to be filed by way of an affidavit, these provisions specifically state so. Therefore, if documentary evidence is filed, as in the present case, the same should be sufficient for compliance with Rule 124 of the 2017 Rules, and same ought to be examined by the concerned Registrar.

10. He submits that at most, the non-filing of an affidavit, but filing only supporting documents with the Application, could have been considered as a curable defect. The Appellant ought to have been given an opportunity to file the required affidavit, instead of the rejection order.

11. He also relies upon the provisions of the Indian Evidence Act, 1872 (*hereinafter, 'Evidence Act'*) to argue that evidence includes both oral evidence and documentary evidence. Further, according to Section 1 of the Evidence Act, the Act does not apply to affidavits presented before a Court or an officer. Therefore, mere affidavit by itself does not constitute evidence, and therefore the rejection of the Application by the impugned order is wholly unsustainable.

12. Mr. Bansal also relies upon Section 129 of the 1999 Act, which provides for evidence before the Registrar. As per this provision, in any proceeding before the Registrar, the evidence shall be given by affidavit. However, if the Registrar deems it appropriate, they may accept oral evidence instead of, or in addition to, the evidence provided by affidavit. According to him, this provision is a directory provision, in terms of the Statement of Objects and Reasons accompanying the Trade Marks Bill, 1999. He cites Clause 129 of the Notes on Clauses of the Trade Marks Bill,



1999 which provides as follows:

“Clause 129-This clause says that evidence before the Registrar should be normally in the form of affidavit only and in addition or in lieu thereof the Registrar may take oral evidence. This is in line with section 99 of the Trade and Merchandise Marks Act, 1958.”

13. On the other hand, Id. Counsel for the Respondent relies upon a public notice dated 22nd May, 2017 bearing no. CG Office/TMR/Well-Known TM/355 (*hereinafter*, ‘Public Notice’) issued by the Office of the Controller General of Patents, Designs and Trademarks, which requires filing of evidence for declaration as a well-known mark. Id. Counsel submits that given the nature of the required evidence, it is implicitly understood that the same has to be filed by way of an affidavit, and the non-filing of an affidavit would in effect mean that the same cannot be considered by the Registrar.

Analysis

14. Heard. Historically, trademarks were registered in respect of specific goods. Upon registration being granted, the use of the said mark by persons other than the registered proprietor *in relation to goods for which the mark was registered* would constitute infringement. This was clearly recognised under Section 29 of the Trade and Merchandise Marks Act, 1958 (*hereinafter*, ‘1958 Act’). However, through judicial precedents, a need was felt to extend the rights in marks to goods and services which may not be identical, but similar, or even related to cognate and allied goods and services. Further, there were some trademarks which had gained such an indomitable reputation and goodwill that their use in relation to unrelated goods and services could still indicate a connection in the course of trade with the owner or proprietor of the mark, who may not be



using the said mark for the said unrelated goods or services. Thus, in 1999, the present 1999 Act introduced protection for service marks as also, Section 29(2), which requires that if the goods are identical or similar, there would be infringement of the mark.

Concept of well-known trade marks.

15. The 1999 Act also introduced the concept of well-known trade marks. Well-known trade mark is defined in Section 2(zg) of the Act as under:

“(zg) “well known trade mark”, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.”

16. Section 11 of the 1999 Act was also introduced to include factors that could entail in the declaration of a mark as a well-known trademark. Section 11(6) of the 1999 Act outlines various conditions and factors to be taken into consideration for granting well-known trademarks. Section 11(7) of the 1999 Act places an obligation on the Registrar to consider certain facts while determining whether a mark is a well-known trademark or not. Section 11(9) of the 1999 Act provides negative stipulations, laying down as to what are the conditions that may not be required for considering a mark as a well-known mark. The relevant provisions relating to well-known trade marks are set out below:

“11. Relative grounds for refusal of registration.—

“(6) The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for



determining a trade mark as a well-known trade mark including—

(i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;

(ii) the duration, extent and geographical area of any use of that trade mark;

(iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;

(iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;

(v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

(7) The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account—

(i) the number of actual or potential consumers of the goods or services;

(ii) the number of persons involved in the channels of distribution of the goods or services;

(iii) the business circles dealing with the goods or services, to which that trade mark applies.

(8) Where a trade mark has been determined to be well known in at least one relevant section of the public in India by any court or Registrar, the Registrar shall consider that trade mark as a well-known trade mark for registration under this Act.



(9) *The Registrar shall not require as a condition, for determining whether a trade mark is a well-known trade mark, any of the following, namely:—*

- (i) that the trade mark has been used in India;*
- (ii) that the trade mark has been registered;*
- (iii) that the application for registration of the trade mark has been filed in India;*
- (iv) that the trade mark—*
 - (a) is well-known in; or*
 - (b) has been registered in; or*
 - (c) in respect of which an application for registration has been filed in, any jurisdiction other than India, or*
 - (v) that the trade mark is well-known to the public at large in India.”*

17. Rule 124 of the 2017 Rules in addition to Section 11 of the 1999 Act, lays down the process by which the Registrar can declare a mark as a well-known mark. The said Rule reads as under:

“124. Determination of Well Known Trademark by Registrar.-

(1) Any person may, on an application in Form TM-M and after payment of fee as mentioned in First schedule, request the Registrar for determination of a trademark as well-known. Such request shall be accompanied by a statement of case along with all the evidence and documents relied by the applicant in support of his claim.

(2) The Registrar shall, while determining the trademark as well-known take in to account the provisions of sub section (6) to (9) of section 11.

(3) For the purpose of determination, the Registrar may call such documents as he thinks fit.

(4) Before determining a trademark as well-known, the Registrar may invite objections from the general public to be filed within thirty days from the date of invitation of such objection.



(5) In case the trademark is determined as well-known, the same shall be published in the trademark Journal and included in the list of well-known trademarks maintained by the Registrar.

(6) The Registrar may, at any time, if it is found that a trademark has been erroneously or inadvertently included or is no longer justified to be in the list of well-known trademarks, remove the same from the list after providing due opportunity of hearing to the concerned party.”

18. As per the above Rule, a Form TM-M is to be filed by the owner or proprietor of the well-known trademark for the purposes of its inclusion as a well-known trademark in the Register. The applicant seeking this declaration is required to pay a sum of Rs.1 lakh as official fee as per the First Schedule of the 2017 Rules. Upon receiving such an application, the Registrar is to determine whether the mark is well-known. The application has to be accompanied by a statement of case, along with all the evidence and documents relied upon by the applicant in support of their claim. In making this determination, the Registrar is to consider all the conditions, and factors as laid down in clause (6) to clause (9) of Section 11 of the 1999 Act.

19. In *Tata Sia Airlines Ltd. v. Union of India (2023:DHC:3659)*, Justice Jyoti Singh of this Court has interpreted the interplay between Section 11 of the 1999 Act and Rule 124 of the 2017 Rules. This Court observed that Rule 124(5) of the 2017 Rules does not create a distinction between a well-known trade mark declared by the Court, or determined by the Registrar. In both scenarios, the procedures outlined are the same. Moreover, the Court noted that the purpose of Rule 124 of the 2017 Rules was to streamline the procedure, and bring uniformity in declaration of well-known trademarks. The Court observed as follows:



“20. From a plain reading of the aforesaid provisions, it is luminously clear that a trademark can be determined as a well-known trademark either by a Court or by the Registrar. The factors/facts which the Registrar is obliged to consider while determining a trademark to be a well-known trademark are enumerated and postulated in Section 11(6) and (7). Section 11(8) is in the nature of a mandatory provision, providing a deeming fiction that where a trademark has been determined to be a well-known in at least one relevant section of the public in India by any Court or Registrar, no further determination on this aspect would be done by the Registrar and the trademark shall be considered a well-known trademark and the Registrar must proceed for registration under the Act. Relevant it is note at this stage that the Section does not provide a mechanism/procedure to include the mark so declared in the List of Well-Known Trademarks and the dispute really transcends into the realm of Rule 124.

...

23. Rule 124 on a plain reading admits of no ambiguity and when holistically read, in my view, is not restricted to mere determination of a trademark as a well-known trademark and therefore the heading should not be taken as a guide to understand the import of the Rule. It is true that Rule 124(1) enables any person to make an application for determination of the trademark as well-known and while doing so, mandates the making of the application in Form TM-M and paying the fee prescribed in the First Schedule. Rule 124(2), however, requires the Registrar to take into account provisions of Section 11(6) to (9), which includes sub-Section (8). Therefore, an existing declaration of the trademark as well-known is bound to be taken into consideration. Further, sub-Rules (5) and (6) enable the Registrar to publish trademark in the Trade Marks Journal and include the same in the



*List of Well-Known Trademarks or remove the same, if included erroneously. Contention of the Petitioner that Rule 124 is restricted in its scope and ambit only to determination of a trademark as well-known, is not well founded and deserves to be rejected. Provisions of the Rule include the procedure for examining if the mark is already declared as well-known and inclusion in the List of Well-Known Trademarks. **Rule 124(5) does not differentiate between a trademark determined as well-known by the Court or by the Registrar and in both eventualities the procedures envisaged is the same and consciously the word 'Registrar' is omitted after the words 'in case the trademark is determined as well-known' and in the scheme of the Rule follows sub-Rule (2), where the examination may show that the mark has been determined as well-known by the Court.** The purpose of Rule 124 was to streamline the procedure and bring uniformity and going by the language of the Rule, in my view, it cannot be restricted in its application to cases where request for 'inclusion' is made with respect to a trademark 'determined' as well-known by the Registrar under 124(1) and exclude inclusion where such a determination is by the Court."*

20. It is now well-settled that the mark need not be known to the public at large or the society at large, but it is sufficient if the mark is well-known within a particular segment of the trade or consumers. The Id. Division Bench of this Court in ***Rolex SA v. Alex Jewellery Pvt. Ltd.*** [215 (2014) DLT 6] in this context observed as follows:

"20. Over the years and very quickly in recent times, the international boundaries are disappearing. With the advent of the internet in the last over ten years it cannot now be said that a trademark which is very well known elsewhere would not be well known here.



The test of a well known trademark in Section 2(zg) is qua the segment of the public which uses such goods. *In my view any one in India, into buying expensive watches, knows of ROLEX watches and ROLEX has a reputation in India. Not only so, to satisfy the needs/demands of consumers in different countries, the well known international brands which were earlier available at prices equivalent to prices in country of origin and which owing to the exchange rate conversion were very high, have adapted to the Indian situation and lowered prices. A large number have set up manufacturing facilities here and taken out several variants. Thus, merely because today the price of a ROLEX watch may be much higher than the price of items of jewellery of the defendants as argued, cannot come in the way of the consumer still believing that the jewellery is from the house of the plaintiff.[...]"*

21. The question that arises in the present case is what is the nature of the evidence, and the documents which are to be filed by an Applicant for determination as a well-known trademark under Section 11 of the 1999 Act read with Rule 124 of the 2017 Rules.

22. The evidence would have to be substantially documentary in nature, which would establish contemporaneous and continuous use, reputation and goodwill. Such documents could *inter alia*, include:

- Invoices showing use of the mark in a large geographical area rather than a restricted area;
- Promotion and advertising of the mark through investment made as also copies of electronic and print advertising;



- Participation in exhibitions, trade fairs, any market survey, decisions of Courts enforcing the trademark in respect of related or unrelated goods;
- The consumer base for the concerned product or service and any material that would establish the recognition of the mark by the said consumer base, such as a Market Survey;
- Number of C&F Agents, wholesale distributors, retail distributors, retailers;
- Exposure on e-commerce platforms;
- Any awards or recognition.
- Balance sheets, chartered accountant certificates and other accounting related documents to establish sales figures and investment on promotion, advertising, etc.

23. Rule 124 of the 2017 Rules uses the word “**evidence and documents**”. The same could also include affidavits by way of evidence and other documents. However, it cannot be held that an affidavit would be mandatory, so long as there is sufficient evidence. A perusal of the word ‘**evidence**’ in the Act and 2017 Rules would show that evidence under Section 129 of the 1999 Act is to be given by affidavit. However, oral evidence can also be taken into consideration. Section 129 of the 1999 Act cannot be read to mean that evidence only means ‘*oral evidence*’ or ‘*evidence by way of an affidavit*’ as defined in Section 3 of the Evidence Act. The said provision is as follows:

“Evidence”. — “Evidence” means and includes — (1) *all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral*



evidence; (2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.”

Thus, as per Section 3 of the Evidence Act, ‘evidence’ would include both oral evidence and documentary evidence.

24. Considering the above provision in the Evidence Act, the nature of the determination by the Registrar would in any event entail filing of the documentary evidence, as mere affidavits by way of evidence without supporting documents may not even be sufficient to establish the well-known status of the mark.

25. On the other hand, documentary evidence without an affidavit can still establish well-known status of the mark as the statement of case would be setting out the relevant description of the documents. Some documents could even be publicly acknowledged and verifiable documents. These documents may not require an affidavit to verify authenticity or genuinity. Some facts could be of such a nature that they could be placed only by way of an affidavit, and no documents may exist to support such facts. For example, reasons for adoption of a mark, manner of coining of mark, family history of use etc. Thus, there can be no hard and fast rule that an affidavit is mandatory. Even the Public Notice does not specifically mention the requirement of an affidavit. The said Public Notice is as follows:

“Trade Mark Rules, 2017 have come in to force with effect from 06/03/2017. Rule 124 provides for determination of a well-known trademark by the Registrar. For the sake of convenience to general public in filing applications under the said Rule, following general guidelines are being issued:-

- *Application under Rule 124 shall be filed on TM-M with prescribed fee as per First Schedule.*



- The application shall be filed only online through compressive e-filing services of trademarks made available at official website i.e. www.ipindia.nic.in.
- The application should be accompanied with following documents:
 - o Statement of case describing the applicant's rights in the trademark and describing the applicant's claim that the trademark is a well-known trademark,
 - o Evidence in support of the applicant's rights and claim viz. evidence as to use of trademark, any applications for registration made or registration obtained, annual sales turnover of the applicant's business based on the subject trademark duly corroborated, evidence as to the number of actual or potential customers of goods or services under the said trademark, evidence regarding publicity and advertisement of the said trademark and the expenses incurred therefor, evidence as to knowledge or recognition of the trademark in the relevant section of the public in India and abroad,
 - o Details of successful enforcement of rights relating to the said trademark in particular extent to which trademark is recognized as well-known trademark by any Court in India or Registrar of Trademarks,
 - o Copy of the Judgment of any court in India or Registrar of Trademarks, wherein the trademark is determined as well-known trademark,
 - o The size of the document submitted along with statement of case as evidence/supporting document should be in PDF format with resolution of 200 X 100 dpi on A4 size papers and total file size shall not exceed the limit of 10 MB.
- After the receipt of the application, the office will consider the claim of the applicant on the basis of documents submitted.



- *The office may publish the details of trademark proposed to be included in the list of well-known trademarks.*
- *Any person, who wants to object the inclusion of the trademark in the list of well-known trademarks, may file his objection in writing to the Registrar of Trademarks stating out the reasons for his objection with supporting documents, if any.*
- *Copy of the objection may be communicated to the applicant for comments within stipulated time.*
- **Office will communicate the decision in respect of the objections to the parties concerned.**
- **Final decision of the office regarding inclusion of the trademark in list of well-known trademarks will be communicated to the applicant.**
- *In case the mark is determined as well-known, the same will be notified in the Trade Marks Journal and included in the list of well-known trademarks made available on the official website.”*

26. Considering the above legal position, especially in light of the provisions of the Evidence Act and the Public Notice, it is held that in order for a determination of well-known status of a trademark, affidavit by way of evidence cannot be held to be a mandatory requirement for grant of well-known status under the 1999 Act and the 2017 Rules. However, documentary evidence would be required.

27. In the process of determination, as per the requirement of Rule 124(3) of the 2017 Rules, if the Registrar is of the opinion that any particular documents need to be supported by way of an affidavit, the Registrar can always give an opportunity to the applicant to file such an affidavit rather than rejecting an application in a completely summary manner. The non-filing of the affidavit by way of evidence shall not be fatal to the application for determining well-known status. It could be at best a requirement which



the Registrar could call upon the applicant to comply with, if the documentary evidence and the statement of case is not sufficient. If an applicant chooses to file affidavit by way of evidence as also the documents, that would also be permissible.

28. In the present case, the Appellant has filed documents on record in support of its claim for well-known status. It has also filed Court orders recognising the trademark proprietorship or ownership.

29. Under such circumstances, the Trademark Registry ought to have, if it was of the opinion that an affidavit was required, given an opportunity to the Petitioner to file such an affidavit without going through the statement of case, the materials and the documents which were filed with the Application. Non-filing of the affidavit could not have resulted in the dismissal of the Application itself.

30. Accordingly, the Appellant is given an opportunity to file a supporting affidavit, and any further documents in support of its Application for grant of well-known status for its mark '*KAMDHENU*'.

31. These documents shall be filed before the Registrar of Trade Marks within 8 weeks. Thereafter, the Registrar shall afford a hearing to the Appellant, and decide the said application in accordance with law. All remedies, if any, are left open.

32. The present appeal is allowed and disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JULY 06, 2023

Rahul/dn