

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

IPDTMA/6/2025
IA NO: GA-COM/1/2025

MARRIOTT WORLDWIDE CORPORATION
VS
SUNJOY HANS AND ORS.

For the appellant	: Mr. Debnath Ghosh, Senior Advocate Mr. Manoj Kumar Tiwari, Advocate Ms. Madhu Rewari, Advocate Mr. Biswaroop Mukherjee, Advocate Ms. Mini Agarwal, Advocate
For the respondents no. 1&2	: Mr. Rudraman Bhattacharyya, Sr Adv. Mr. Suryaneel Das, Advocate Mr. Akash Munshi, Advocate Ms. Oindrila Ghosal, Advocate Mr. Chiranjit Pal, Advocate Mr. Anish Gupta, Advocate
For the Controller	: Mr. Sunil Singhanian, Advocate. Mrs. Priti Jain, Advocate.
Heard on	: 12 th August 2025
Judgment on	: 12 th August, 2025.

Ravi Krishan Kapur, J.:

1. This is an appeal under Section 91 of the Trademarks Act 1999, directed against an order dated 18 February 2025, passed by the Deputy Registrar of Trademarks, whereby the appellant's opposition to the respondent nos.

1 and 2's application for registration of a deceptively similar mark, "The New Marrion" was dismissed.

2. Briefly, the petitioner is engaged in the hospitality industry and is carrying on business as part of the Marriott Group of Companies. The petitioner is a well-known brand and provides hospitality and related services. The petitioner is also the registered proprietor of the well-known trademark "MARRIOTT", which it has envisaged, adopted and used continuously worldwide since 1957 and in India since 1992. The petitioner has obtained registration for the MARRIOTT trade marks including the word mark "MARRIOTT" with the earliest registration dating back to 1992 as far as India is concerned.

3. The respondent no. 1 claims to be the proprietor of the impugned mark



, in class 43 for similar services of hotel and resort services, restaurants, bar and lounge services, banquet and catering services.

4. It is alleged that the respondent no. 2 had applied for registration of the impugned mark on 8 November, 2022 with the user claim since 12 October, 2000. Thereafter, the respondent no. 2 filed a FORM TM-M on 6 May, 2024 to amend the name of the applicant as Sunjoy Hans (the respondent no. 1). Upon the filing of the above application, diverse orders were passed from time to time and ultimately the impugned order came to be passed *inter alia* rejecting the objection of the petitioner on the ground that the evidence in support of the opposition had not been apostilled in accordance with law.

5. On behalf of the appellant, it is contended that the impugned order has been passed in violation of the principles of natural justice and without taking into consideration the evidence in support of the opposition filed by the appellant under Rule 45 of the Trademarks Rule 2017. It is further contended that the provisions of section 14 of the Notaries Act 1952 have been totally disregarded and despite an affidavit being filed in support of the opposition by the appellant and the same being notarized before the Notary Public of the place where it was executed i.e. Maryland, USA, and the same was unjustifiably and arbitrarily not taken on record. In support of such contentions, the appellant relies on the decisions in *Rajesh Wadhwa v. Dr. (Mrs.) Sushma Govil*, 37(1989) DLT 88, para 12, *Crocodile Pte. Ltd. v. Lacoste S.A.*: (2008) ILR 1 Del 1101 and *Jaldhi Overseas Pvt. Ltd. v. Bhushan Power & Steel Limited*: 2017 SCC Online Cal 4414 at paras 52,53,62 and 63./.
6. On behalf of the respondent nos. 1 and 2, it is submitted that the instant appeal is infructuous inasmuch as the impugned order has already been implemented and the registration certificate in terms of the impugned order has been uploaded. It is further contended that the impugned order does not require any interference whatsoever inasmuch as the statutory authorities were well within their rights, not to place any reliance on the evidence in support of the opposition.
7. Admittedly, the merits of the objections raised by the appellant have not been adjudicated upon in the impugned order. The only ground on which the opposition filed on behalf of the appellant has been rejected is that the

same had not been apostilled in accordance with law. The evidence affidavit filed in support of the opposition was notarized before the Notary Public at Maryland, USA. This being the case, there was no further requirement for the Central Government to issue a notice under Section 14 of the Notaries Act, 1952. [*Rajesh Wadhwa v. Dr. (Mrs.) Sushma Govil*, 37(1989) DLT 88, para 12 and *Crocodile Pte. Ltd. v. Lacoste S.A.* (2008) ILR 1 Del 1101: MANU/DE/9164/2007, para 16.]. In any event, such procedural and technical grounds did not justify dismissal of the objection.

8. In this context, the respondent's reliance on the decision In Re: *Rei Agro and UBS AG & Others*, 2015 SCC Online Calcutta 2557 is misplaced. The infirmity in the decision rendered in *Rei Agro and UBS AG & Others* (*supra*) in not having considered the decision in *K K Ray (Pvt) Ltd vs State*, AIR 1967 Cal 636 has been recognised in *Jaldhi Overseas Pvt. Ltd. v. Bhushan Power* (*Supra*). In addition, under Rule 120(3)(b) of the Trademarks Rules 2017, the Registrar could have accepted affidavits notarized in any country or place outside India before a Notary Public of the country or place and such provisions are part of the special statute and Rules framed thereunder and prevail over all other general laws. There is nothing in Section 14 of the Notaries Act, 1952, which creates an embargo in accepting the evidence in support of the opposition being taken on record. There is also a presumption to this effect under section 57 of the Evidence Act, 1882 with regard to the genuineness of the seal of the said Notary.
9. Ironically, the respondent no 2 failed to file its Counterstatement within the prescribed time of 2 months from the receipt of the notice of

opposition as prescribed under the Act. Such delay was condoned by the respondent no 3 without any power to condone the same with the result of shifting the burden of proof on the appellant to show receipt of the notice of opposition. Such exercise of power is *ex facie* arbitrary and perverse to say the least.

10. In such view of the matter, the impugned order is unsustainable and is set aside. The matter is remanded back to the respondent no. 3 to have the matter heard afresh, including the opposition filed by the appellant and after taking the evidence in support thereof on record.
11. It is made clear that there has been no adjudication on the merits of the case and all questions insofar as the merits of the case are concerned are left open to be decided in accordance with law. The above exercise is to be completed within a period of four months from the date of communication of this order to the respondent No. 3.
12. With the above directions, IPDTMA/6/2025 stands disposed of. Since no affidavit has been filed by the respondent no 2, the allegations contained in the stay application and appeal are not admitted.
13. All connected interlocutory applications including GA 1 of 2025 stand disposed of as infructuous.

(RAVI KRISHAN KAPUR, J.)

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