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

+ **C.A.(COMM.IPD-TM) 16/2023 & I.A. 12806/2023**

SHIV BALAK

.....Appellant

Through: Mr. Veerendra Kumar Sinha, Mr.
Rajendra Prasad, Ms. Suman
Prabhakar, Advocates (M:
9810264713)

versus

THE REGISTRAR OF TRADE MARKS AND OTHERS

.....Respondents

Through: Ms. Rukhmini Bobde, CGSC with
Mr. Jatin Dhamija, Mr. Amlaan
Kumar, Mr. Vinayak Aren, Advocates
(M: 9810794060)

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+ **C.O. (COMM.IPD-TM) 84/2021**

SHIV BALAK (PROP). M/S MAHENDRA OIL COMPANY

.....Petitioner

Through: Mr. Veerendra Kumar Sinha, Mr.
Rajendra Prasad, Ms. Suman
Prabhakar, Ms. Nupur Sinha,
Advocates

versus

SUNITA PURI AND ANR.

.....Respondents

Through: Ms. Rukhmini Bobde, CGSC with
Mr. Jatin Dhamija, Mr. Amlaan
Kumar, Mr. Vinayak Aren, Advocates
(M: 9810794060)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

12.02.2025

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1. C.A.(COMM.IPD-TM) 16/2023 has been filed challenging the order dated 29th June, 2020 passed by the Registrar of Trademarks, wherein, the appellant's trademark 'MAXICO LUBE (DEVICE)' was rejected on the ground that there already exists a similar mark.
2. Learned counsel for the appellant submits that he had filed various documents in support of the user of the mark of the appellant before the Trademark Registry.
3. However, the same were not considered.
4. This Court *vide* order dated 13th January, 2025 had noted the submissions of the appellant as follows:

"1. Learned counsel appearing for the appellant/petitioner has submitted that though the documents in support of the user of the mark of the appellant/petitioner were filed before the Trade Marks Registry, the same were not considered.

2. He further submits that as per the rule of the Trade Marks Registry, which was prevalent at that point of time, along with the application, the appellant/petitioner was not required to file any documents, showing the user of the mark.

3. He submits that at the time of hearing before the Trade Marks Registry, the requisite documents showing the user of the mark were duly produced before the Trade Marks Registry, which was not considered by the Trade Marks Registry.

4. He further submits that subsequently, upon filing of review, the documents were filed, and in support of the same, he has filed the list of uploaded documents, which shows that documents were uploaded by the appellant/petitioner on 23rd July, 2019.

xxx xxx xxx"

5. Learned counsel for the appellant submits that all the requisite documents in support of the user of the mark of the appellant have been filed before this Court, and have also been placed on record before the Trademark



Registry.

6. Perusal of the impugned order dated 29th June, 2020, passed by the Trademark Registry, shows that it has been stated that the appellant herein had failed to produce proper documentary evidence in support of statement of user claimed in the application or any other relevant material/ corroborative evidence in support of the application for registration.

7. This Court notes the submissions made by learned counsel for the appellant that the documents in support of the user of the mark in question by the appellant, were before the Trademark Registry at the time of passing of the impugned order.

8. Considering the submissions made before this Court, the present appeal is allowed.

9. The impugned order dated 29th June, 2020, is set aside.

10. The application number 2746517 filed by the appellant under Class 4 is hereby revived, and the matter is remanded back to the Trademark Registry.

11. The Registrar of Trademarks is directed to consider the application of the appellant on merits and to also consider all the documents which have been placed on record by the appellant.

12. At this stage, learned counsel for the appellant submits that rectification petition being *C.O. (COMM.IPD-TM) 84/2021*, which has been filed for rectification in relation to the mark of respondent no. 1, i.e., 'MAXICO LUBE' registered under Class 4 bearing no. 2552400, be also placed before the Trademark Registry, so that both the matters can be decided comprehensively by the Trademark Registry.

13. Accordingly, liberty is granted to the petitioner in *C.O. (COMM.IPD-*



TM) 84/2021 to place all the pleadings and documents before the Trademark Registry for consideration of its application for rectification of the mark registered under Class 4 bearing no. 2552400.

14. The Registrar of Trademarks is directed to consider the applications of the applicant in a time bound manner, preferably within 12 months, from today.

15. The Trademark Registry is also directed to give a physical hearing to the applicant and other parties.

16. The Registry is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on the e-mail ID: llc-ipo@gov.in, for compliance.

17. At request of learned counsel for the appellant/applicant, he is granted liberty to approach the office of Registrar of Trademarks to intimate the order passed today and to physically hand over copy of today's order.

18. With the aforesaid directions, the present appeal, as well as the petition, along with pending applications, stand disposed of.

MINI PUSHKARNA, J

FEBRUARY 12, 2025

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