

IN THE HIGH COURT AT CALCUTTA
INTELLECTUAL PROPERTY RIGHTS APPELLATE DIVISION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

TEMPAPO-IPD/2/2025
Dinesh Kumar Chowdhury
Vs.

The Registrar of Trade Marks and Another

For the Appellant :Mr. Soorajit Dasgupta, Adv.
Ms. Labony Ray, Adv.

For the Respondent No.2 :Mr. Arunava Mukherjee, Adv.
Mr. Ronojoy Basu, Adv.
Mr. Jeeten Kumar Dhar, Adv.

For the Union of India :Mr. Dhruv Surana, Adv.
Ms. Sumita Sarkar, Adv.

Hearing Concluded on : April 06, 2026
Judgement on : April 24, 2026

DEBANGSU BASAK, J.:-

- 1.** Appellant has challenged the order dated March 3, 2025 passed by the Intellectual Property Rights Division.
- 2.** By the impugned order learned Single Judge has dismissed the appeal under Section 91 of the Trade Marks Act, 1999 of the appellant directed against the order dated

August 6, 2024 passed by the Registrar allowing the application of the respondent No. 2 or rectification and cancellation of the registration in favour of the appellant.

3. Learned advocate appearing for the respondent No. 2 has raised the issue of maintainability of the appeal. The appeal has been heard on the issue of maintainability.

4. Since, the issue of maintainability of the appeal has been raised, by the respondent No. 2, its contentions on such issue are recorded first and thereafter the contentions of the appellant.

5. Learned advocate appearing for the respondent No. 2 has contended that, the appeal is not maintainable in view of the provisions of Section 100A of the Code of Civil Procedure, 1908. He has referred to the provisions of Section 100 A and contended that, notwithstanding the Letters Patent, 1865, no further appeal is available against an order passed by the Intellectual Property Rights Division in respect of an appeal under Section 91 of the Act of 1999.

6. Learned advocate appearing for the respondent No. 2 has contended that, Section 91 of the Act of 1999 does not provide for a Second Appeal originating from the order of the Registrar of Trademarks.

7. Learned advocate appearing for the respondent No. 2 has relied upon **2006 Volume 7 Supreme Court Cases 613 (Kamal Kumar Dutta and Another vs. Ruby General Hospital Ltd. And Others)**, **2025 SCC Online Cal 8647 (Glorious Investment Ltd vs. Dunlop International Ltd)**, **2010 Volume 13 Supreme Court Cases 517 (Mohd. Saud and Another vs. Dr. (Maj.) Shaikh Mahfooz)**, **2010 Volume 9 Supreme Court Cases 84 (Geeta Devi and Others vs. Puran Ram Raigar and Another)**, **2007 SCC Online Raj 22 (R.S.R.T.C. vs. Vaibhav Kumar & Ors.)**, and **2025 SCC Online Mad 13148 (Italfarmaco SPA vs. Deputy Controller of Patents & Designs)** in support of his contention that, the present appeal is not maintainable.

8. Learned advocate appearing for the appellant has contended that, the appeal is maintainable. He has pointed out that, the appellant was granted registration in respect of label mark comprising of various elements including the words “Ganraj Chhappan Bhog”. The respondent had challenged such registration and applied for rectification of the Register of Trademarks on December 5, 2020. By an order dated August 6, 2024, the respondent No. 1 allowed the

application of the respondent No. 2 for rectification and cancelled the registration in favour of the appellant.

9. Learned advocate appearing for the appellant has contended that, the order dated August 6, 2024 passed by the respondent No. 1 was challenged by the appellant under Section 91 of the Act of 1999 before the Intellectual Property Division. By the impugned order, the Intellectual Property Division has dismissed such appeal.

10. Learned advocate appearing for the appellant has contended that, the right of appeal under the Act of 1999 is not derived under the Code of Civil Procedure, 1908. The Act of 1999 has provided for the right of appeal which does not borrow any additional power or authority from the Code of Civil Procedure, 1908. Therefore, the provisions of the Code of Civil Procedure, 1908 cannot be invoked to decide the appealability under the Act of 1999.

11. Learned advocate appearing for the appellant has contended that, the Code of Civil Procedure, 1908 is applicable in cases where the right of appeal flows from the, Code of Civil Procedure, 1908 itself. He has contended that, Section 100A of the Code of Civil Procedure, 1908 is applicable to any order or decree passed by a civil court.

12. Learned advocate appearing for the appellant has contended that, Registrar of Trademarks cannot be said to be a court or a tribunal. He has referred to Section 2 (y) and 3 of the Act of 1999 contended that, no qualification is provided under the Act of 1999 for a person to be appointed as a Registrar.

13. Learned advocate appearing for the appellant has compared the status of a Presiding Officer under the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 with that of the Registrar. He has contended that, Registrar does not have power to decide questions of fraud, forgery or any other disputed questions of fact. He has preferred to Section 127 of the Act of 1999 with regard to the powers of the Registrar. He has contended that the powers of a civil court granted to the Registrar are restricted and do not make the Registrar a civil court or a court. No provision of the Code of Civil Procedure, 1908 is applicable to the proceedings before the Registrar. Orders of Registrar are not executable in nature except the order of cost. He has referred to Section 127 (b) of the Act of 1999 in this regard. He has contended that, the Registrar is added as a party in an appeal from its order. He has referred to Rule 12 (a) and (d) of the Intellectual Property Rights

Division Rules of the High Court at Calcutta, 2023 in this regard. He has relied upon ***All India Reporter 1959 Bombay 21 (The Anglo French Drug Co. (Eastern) Private Ltd. vs. R.D. Tinaikar)*** and ***2008 Volume 10 Supreme Court Cases 723 (Khoday Distilleries Limited vs. Scotch Whisky Association and Others)*** in this regard.

14. Learned advocate appearing for the appellant has contended that the Registrar cannot be called a tribunal as it does not come within the provisions of the Tribunal Reforms Act, 2021. The Registrar is also not a court or a civil court.

15. Learned advocate appearing for the appellant has contended that, Section 91 of the Act of 1999 does not prohibit a further appeal under Clause 15 of the Letters Patent, 1865. He has compared the provisions of Trade and Merchandise Marks Act, 1958 and the Act of 1999. Relying upon ***1953 Volume 1 Supreme Court Cases 794 (National Sewing Thread Company Limited vs. James Chadwick and Brothers Limited)*** learned advocate appearing for the appellant has contended that, when the proceeding is brought before the High Court, the rules of the High Court would be attracted.

16. Learned advocate appearing for the appellant has contended that, right of appeal cannot be taken away by invoking the provisions of the Code of Civil Procedure, 1908. He has contended that, powers conferred on a chartered High Court by the Letters Patent, 1865 cannot be taken away by implication. He has relied upon **2002 Volume 3 Supreme Court Cases 705 (Sharda Devi vs. State of Bihar)**, and **2003 Volume 10 Supreme Court Cases 361 (Subal Paul vs. Malina Paul and Another)**.

17. Learned advocate appearing for the appellant has contended that, Intellectual Property Rights Division Rules of the High Court at Calcutta, 2023 provide for appeals from all orders of the Intellectual Property Rights Division. He has relied upon Section 129 of the Code of Civil Procedure, 1908 to contend that the rules framed by the High Court shall not be inconsistent with the Letters Patent, 1865. He has pointed out that, power to frame rules is derived from clause 37 of the Letters Patent, 1865. Therefore, according to him, the Rules of 2023 cannot be read to have taken away right of appeal under clause 15 of the Letters Patent, 1865. In this regard, he has relied upon rule 2 (o), (iv), (v), 5 (d) and Serial No. 30 of Schedule I of the Rules of 2023.

18. Learned advocate appearing for the appellant has contended that, the decision of ***Glorious Investments (supra)*** on the right of appeal is not correct. He has relied upon **2023 SCC Online Del 5531 (Promoshirt SM SA vs. Armassuisse and Another)** in support of the contention that, an appeal is maintainable. He has contended that, the ratio of ***Kamal Kumar Dutta (supra)*** is not applicable as, a Company Law Board established under Section 10E of the Companies Act, 1956 cannot be equated with a Registrar under Section 3 of the Act of 1999.

19. It would be apposite to advert to the factual matrix that has given rise to the present appeal. Appellant had applied for and was granted registration in respect of a label Mark comprising of various elements including the words “Ganraj Chhappan Bhog” on August 19, 2020.

20. The respondent had applied for rectification of the Registrar of Trademark on December 05, 2020 relating to the label mark “Ganraj Chhappan Bhog” existing in favour of the appellant. By order dated August 06, 2024 the respondent No. 1 had allowed the application of the respondent no. 2 for rectification and cancelled the registration then existing in favour of the appellant.

21. Appellant had challenged the order dated August 06, 2024 of the respondent no. 1, under Section 91 of the Act of 1999 before the Intellectual Property Rights Division of this Hon'ble Court. Learned Single Judge by the impugned order has dismissed such appeal.

22. *Kamal Kumar Dutta (supra)* has construed the provisions of Section 10E, 397 and 398 of the Companies Act, 1956 and held that, Sections 10E, 10F, 397 and 398 of the Act of 1996 is a complete code. Appeals against orders passed under Section 397 and 398 of the Act of 1956 is appealable under Section 10F thereof and that, no further appeal has been provided against the order of the learned Single Judge passed under Section 10F of the Act of 1996.

23. *Kamal Kumar Dutta (supra)* while holding that, no further appeal lies, has observed that, when Company Law Board (CLB) exercised powers under Section 397 and 398 of the Act of 1956 it was doing so as a quasi-judicial power and as an original authority. CLB may not be a Court but it has all the trappings of the Court.

24. A Coordinate Bench in ***Glorious Investments Limited (supra)*** has found the Registrar of Trade Mark under the Act of 1999 to have the trappings of a Court. It has therefore

applied the ratio of ***Kamal Kumar Dutta (supra)*** to hold that further appeal was not maintainable.

25. Mohd. Saud and Another (supra) has held that, an appeal is a creature of statute and not an inherent right. The right of appeal can be taken away or curtailed by subsequent enactment. It has also noticed that, the validity of Section 100A of the Code of Civil Procedure, 1908 had been upheld by the Hon'ble Supreme Court.

26. In ***Geeta Devi and Others (supra)***, the Supreme Court has in the facts of that case found that a further appeal from the order of the learned Single Judge was not maintainable in view of Section 100A of the Code of Civil Procedure, 1908.

27. The Rajasthan High Court in ***Vaibhav Kumar & Ors (supra)*** has held that, an appeal from an order disposing of an appeal under Section 173 of the Motor Vehicles Act against the award of the Motor Accidents Claim Tribunal is not maintainable with effect from July 01, 2002 in view of Section 100A of the Code of Civil Procedure, 1908.

28. The Madras High Court in ***Italfarmaco SPA (surpa)*** has held that, an appeal under Clause 15 of the Letters Patent, 1865 is not maintainable in view of Section 13 of the

Commercial Courts Act, 2015 against an order disposing of an appeal under Section 117A of the Patents Act, 1917.

29. The issue that has fallen for consideration is, whether by reason of Section 100A of the Code of Civil Procedure, 1908, an appeal to the Division Bench from an order of the learned Single Judge, passed in an appeal under Section 91 of the Act of 1999 is maintainable or not. ***The Anglo French Drug Co. (Eastern) Private Ltd. (supra)*** has come into being much prior to the amendment to Section 91 being introduced. Similarly, ***Khoday Distilleries Limited (supra)*** has considered the provisions of the Trade and Merchandise Marks Act, 1958. ***National Sewing Thread Company Limited (supra)*** has considered the provisions of Trademarks Act, 1940.

30. Maintainability of Letters Patent Appeal before the High Court was considered in ***Sharda Devi (supra)*** in the context of Land Acquisition Act, 1894. It has observed that, when a Letters Patent grants the High Court power of appeal against the judgment of a Single Judge, right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent. It has

therefore recognized that, right of appeal can be excluded by a statute.

31. *Subal Paul (supra)* has held that, Letters Patent Appeal against an order passed by the learned Single Judge in an appeal under Section 299 of the Succession Act, 1925 was maintainable.

32. *Subal Paul (supra)* was an appeal directed against the judgment and order dated August 30, 2000 of the Guwahati High Court. It has considered Section 104 of the Code of Civil Procedure, 1908. Section 100A of the Code of Civil Procedure, 1908 as it stands today had come into effect from July 1, 2002 which is subsequent to ***Subal Paul (supra)***.

33. *Subal Paul (supra)* has been considered in ***Kamal Kumar Dutta (supra)***. ***Kamal Kumar Dutta (supra)*** has considered Section 10F of Companies Act of 1956, and Section 100A of the Code of Civil Procedure, 1908 to mean that, no further appeal is available from the order of the learned Single Judge, in view of Section 100A of the Code of Civil Procedure, 1908.

34. Parties have relied upon Section 91 of the Act of 1999 which is as follows:-

“91. Appeals to High Court — (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the [High Court] within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the [High Court] that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the High Court shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and by such fees as may be prescribed.”

35. Section 91 of the Act of 1999 has provided for appeals from an order or decision of the Registrar. Initially, Section 91 had provided for an appeal to the Appellate Board. Appellate Board has been substituted, by the High Court with retrospective effect from April 4, 2021. At present, it is the High Court before which, any person aggrieved by an order or decision of the Registrar under the Act of 1999 or the rules made thereunder may prefer an appeal within the time period specified therein.

36. In the facts and circumstances of the present case, the appellant before us being aggrieved by the decision of the

Registrar exercising powers under the Act of 1999 has preferred an appeal under Section 91 of the Act of 1999 resulting in the impugned order.

37. Parties have relied on Section 100A of the Code of Civil Procedure, 1908 which is as follows:-

“100A. No further appeal in certain cases. – Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.”

38. Section 100A has stipulated that no further appeal is maintainable in the circumstances specified. It has prescribed that notwithstanding anything contained in the Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.

39. Under the scheme of Section 100A of the Code of Civil Procedure, 1908, the prohibition of further appeal from a decision of a learned Single Judge of the High Court, becomes

operative, on the learned Single Judge exercising appeal powers in relation to the appellate order or decree or the original order or decree, before it. The prohibition comes into effect notwithstanding the origin of the order or decree before the learned Single Judge. All that is required to be satisfied for the prohibition under Section 100A of the Code of Civil Procedure, 1908 to come into operation is the exercise of appeal powers by the learned Single Judge.

40. In other words, when the learned Single Judge has exercised powers of an Appeal Court in respect of any original or appeal order, prohibition under Section 100A of the Code of Civil Procedure, 1908 comes into operation. It is immaterial as to whether, the original order or the appellate order or decree, impugned before the learned Single Judge, satisfies the tests of order or decree as prescribed under the Code of Civil Procedure, 1908 and whether or not, the authority passing such original order or the appellate order is a Court or has the trappings of the Court.

41. Once, the learned Single Judge has exercised appeal powers, then, no further appeal lies against such order of the learned Single Judge, in view of the prohibition prescribed under Section 100A of Code of Civil Procedure, 1908.

42. Section 91 of the Act of 1999 had been amended to provide for appeals to the High Court with retrospective effect from April 4, 2021. Section 100A had been introduced to the Code of Civil Procedure, 1908 initially with effect from February 1, 1977. It was subsequently substituted with effect from July 1, 2002.

43. When, High Court was being substituted in place and stead of the Appellate Board in Section 91 of the Act of 1999, the provisions of Section 100A of the Code of Civil Procedure, 1908 prohibiting further appeal, was already in force. Therefore, legislature was aware that, no further appeal would be available from an order passed by the learned Single Judge of a High Court, while deciding an appeal under Section 91 of the Act of 1999, as such order of the learned Single Judge would then be governed by the provisions of Section 100A of the Code of Civil Procedure, 1908.

44. Tested on the anvil of the law discussed above, in the facts and circumstances of the present case, the learned Single Judge has exercised powers under Section 91 of the Act of 1999 by passing the impugned order. Section 91 of the Act of 1999 has prescribed an appeal to lie before the High Court against the decision of the Registrar acting under the Act of

1999. Decision of the Registrar impugned before learned Single Judge, has been passed in exercise of powers under the Act of 1999.

45. In such circumstances, the prohibition under Section 100A of the Code of Civil Procedure, 1908 operates against the appellant in the present appeal.

46. The issue framed in paragraph 30 therein is therefore answered by holding that, the present appeal is not maintainable.

47. TEMPAPO-IPD 2 of 2025 is therefore dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

48. I agree.

[MD. SHABBAR RASHIDI, J.]