

TMA/3/2023

IN THE HIGH COURT AT CALCUTTA
INTELLECTUAL PROPERTY RIGHTS DIVISION

BARCODE MARKETING PTE. LTD.
VS.
THE SENIOR EXAMINER OF TRADE MARKS AND ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 16th June, 2026.

Mr. Debnath Ghosh, Sr. Adv., Mr. Biswaroop Mukherjee, Ms.
Vedika Sureka, Advocates for the appellant.

Mr. Anamika Pandey, Mr. Ghanshyam
Pandey, Advocates for the respondents.

The Court : In this appeal the appellant has challenged an order dated 23rd October, 2018. Although, the order was passed on 23rd October, 2018, the Statement of Grounds of decision under Rule 36(1) of the Trade Marks Rules, 2017 in connection with the said order was passed on 23rd December, 2022.

It is the case of the appellant that the order dated 23rd October, 2018 was passed by the Examiner of Trade Marks said to have been authorised under Section 3(2) of the Trade Marks Act, 1999 (hereinafter referred to as 'the 1999 Act'). It is also the case of the appellant that when the order dated 23rd October, 2018 was passed the *persona designata* acting as the Examiner of Trade Marks though had indicated in the seal appended therein to be authorised under Section 3(2) of the 1999 Act, but he was not actually authorised at that point of time to pass the order. It is, however, the case of the appellant that when the detailed reasons were supplied by an order

dated 23rd December, 2022 the *persona designata* on having been appointed as Senior Examiner was competent to hear the matter. It is the further case of the appellant that the detailed reasons will not make the order to have been passed on 23rd December, 2022 instead of 23rd October, 2018. It will continue to remain as an order dated 23rd October, 2018. The detailed reasons were also supplied after four years from the passing of the order.

On behalf of the respondents it is fairly submitted that going into the issue whether *persona designata* as the Examiner of Trade Marks was authorised under Section 3(2) of the 1999 Act on 23rd October, 2018 when the order was passed and the authority of the same person as Senior Examiner on 23rd December, 2022 when the detailed reasons were supplied will only consume the judicial time in venturing into the jurisdictional issue without the matter being heard on merits which may ultimately result into an order of this Court holding that the *persona designata* did not have the jurisdiction to hear and pass the order dated 23rd October, 2018 or he did not possess the same. The matter will thereafter be again heard on the merits of the matter on factual issues.

It is, therefore, suggested by the learned Advocate representing the respondents, on instruction, subject to the approval of this Court that the order may be set aside and the matter may be remanded back to the appropriate authority for rehearing of the same on the basis of the same set of papers and documents afresh without being influenced by any of the observations given in the orders dated 23rd October, 2018 and 23rd December, 2022.

The appellant is also agreeable to such proposal.

In the aforesaid facts and circumstances, the order dated 23rd

October, 2018 along with the Statement of Grounds to such order passed on 23rd December, 2022 are set aside by consent of parties. The matter is remanded back to the competent authority for adjudication of the same afresh as expeditiously as possible, but preferably within a period of eight months from the date of communication of this order. The parties will, however, be free to bring on record before the appropriate authority any substantial change in circumstances between 2018 and this date for being considered by the appropriate authority, if such authority thinks the same to be relevant for the purpose of adjudicating the issues involved.

The appeal and the connected application, if any, accordingly stand disposed of.

(ARINDAM MUKHERJEE, J.)