

Reserved On : 27/04/2026
Pronounced On : 23/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 619 of 2026
In
R/CIVIL APPEAL/22/2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In
R/LETTERS PATENT APPEAL NO. 619 of 2026
With
R/LETTERS PATENT APPEAL NO. 620 of 2026
In
R/CIVIL APPEAL NO. 21 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In
R/LETTERS PATENT APPEAL NO. 620 of 2026
In
R/CIVIL APPEAL NO. 21 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	

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M/S RAJ ABHUSHAN BHANDAR

Versus

THE ASSISTANT REGISTRAR OF TRADE MARKS & ANR.

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MR PRATIK Y JASANI(5325) for the Appellant(s) No. 1
MR ANKIT SHAH(6371) for the Respondent(s) No. 1
MS RUSHVI N SHAH with MR JAWAD Z. SHAIKH with MR ARBAZ A. SAIYEDfor the Respondent(s) No. 2

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CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)

1. This set of intra-court appeals are directed against the common judgment and order dated 11.07.2025 passed by the learned Single judge of this Court in a statutory appeal under Section 91 of the Trade Marks Act, 1999, (in short as the "TM Act' 1999) which was against the order dated 27.02.2023 passed by the Trademark Registry, Ahmedabad.
2. At the outset, preliminary objection has been raised by the learned counsel for the respondent herein, with regard to the maintainability of the Letters Patent Appeal under Clause 15 of the Letters Patent, with the contention that the jurisdiction exercised by the learned Single judge in a statutory appeal being appellate in nature in continuation of the proceedings originated before the statutory authority, the Letters Patent Appeal, which is an intra-court appeal from the judgement or order of the court of original jurisdiction of the High Court, would not be maintainable.
3. The submission of the learned counsel for the respondent No. 2 is that the intra-court appeal may lie where the learned Single judge exercises original jurisdiction and not appellate jurisdiction in a statutory

appeal. It is submitted that the legislative intent to provide only one round of appeal against the order of the Trademark Registry under the Trade Marks Act, 1999, is evident from the scheme of the Act, 1999, whereby the Trade and Merchandise Marks Act, 1958 (in short as the 'TMM Act' 1958) has been repealed.

4. Section 91 of the TM Act' 1999 is a departure from the statutory framework of the predecessor Act, namely the TMM Act' 1958. Section 109 of the TMM Act' 1958 provided for two levels of appeals in sub-section (4) and sub-section (5) thereof. Sub-section (5) of Section 109 provided for an appeal to a bench of the High Court against a decision of the Single judge of the High Court in appeal under sub-section (4), against an order or decision of the Registrar under the said Act or the Rules made therein. The submission is that under the TMM Act' 1958, the legislature has excluded second level of appeal, which was provided under the Predecessor Act of 1958.
5. Section 109 of the Trade and Merchandise Marks Act, 1958 and Section 91 of the Trade Marks Act, 1999 being extracted at this juncture :-

The Trade and Merchandise Marks Act 1958

"109. Appeals - (1) No appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government or from any act or order of the Registrar for the purpose of giving effect to any such decision, order or direction.

(2) Save as otherwise expressly provided in subsection (1) or in any other provision of this Act, an appeal shall lie to the High Court within the prescribed period from any order or decision of the Registrar under this Act or the rules made thereunder.

(3) Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be prescribed.

(4) Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(5) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court.

(6) The High Court in disposing of an appeal under this section shall have the power to make any order which the Registrar could make under this Act.

(7) In an appeal by an applicant for registration against a decision of the Registrar under section 17 or section 18 or section 21, it shall not be open, save with the express permission of the court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be. and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(8) Subject to the provisions of this Act and of the rules made thereunder, the provisions of the Code of Civil Procedure, 1908, shall apply to appeals

before a High Court under this Act.”

The Trade Marks Act, 1999

“91. Appeals to ²[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 ²[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 ²[High Court] that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal to the ²[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.”

6. The submission is that the corresponding provision of appeal incorporated in Section 91 in the successor Trade Marks Act, 1999 providing for only one level of appeal to the High Court is a conscious omission of the second level of appeal to a higher Bench of the High Court as was provided in sub-section (5) of Section 109 of the predecessor TMM Act’ 1958. The present Letters Patent Appeal, thus, is nothing but an effort of the appellant to

² Subs. by the Tribunals Reforms Act, 2021(33 of 2021), sec. 21(k), for "Appellate Board" (w.r.e.f.4-4-2021).

circumvent the statutory scheme and the legislative intent not to provide further appeal to the High Court against the order of the learned Single Judge.

7. Further, placing Section 100A of the Code of Civil Procedure, 1908, it is submitted that the amendment brought in the Code of Civil Procedure by the Act 22 of the 2002 w.e.f. 01.07.2002 has categorically provided that notwithstanding anything contained in Letters Patent for any High Court or 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 High Court, no further appeal shall lie from the judgment and decree of such Single Judge. Second level of appeal against the order passed by the learned Single Judge in its appellate jurisdiction is, thus, specifically excluded by virtue of Section 100A of the Code of Civil Procedure. The provisions opens with the non-obstante clause and the use of expression “notwithstanding” is of crucial significance, inasmuch as, it gives the provision an overriding effect over all other laws including the Letters Patent under which intra court appeals are preferred in this Court.

8. For ready reference, Section 100A of the Code of Civil Procedure, 1908, is reproduced hereinunder :-

“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.”

9. It is further submitted that the language of Clause 15 of the Letters Patent itself is clear when it says that an appeal shall lie to the High Court from the judgement, not being a judgement passed in exercise of the appellate jurisdiction in respect of a decree or an order made in exercise of the appellate jurisdiction by a Court subject to the superintendence of the said High Court. The submission is that the intra court appeals in respect of a decree or order made in the exercise of appellate or revisional jurisdiction including the order passed in exercise of the powers of superintendence of the High Court are specifically excluded. An intra court appeal against the order of a Single Judge is maintainable under Clause 15 of the Letters Patent, only when the order by the Single Judge is passed in exercise of the original jurisdiction of the High Court and not in appellate, revisional or supervisory jurisdiction.
10. By further reading of Clause 15 of the Letters Patent, it was submitted that the second part of the clause starts with the words “and that notwithstanding anything hereinbefore provided” will not attract and will not be invoked, in view of the clear language employed therein that intra court appeal will not be attracted or cannot be

invoked except of a certificate granting leave of the learned Single Judge is required.

11. Moreover, with the insertion of Section 100A in the Code of Civil Procedure in the year 2002, intra court appeal cannot be maintained in respect of a decree or order made in exercise of appellate jurisdiction of the High Court.
12. It is further submitted that the function of the Registrar under the Trade Marks Act is adjudicatory as it involves determination of the civil right between the parties. The Registrar while granting or refusing to register or cancel registration or refuse to cancel registration, considers pleadings, evaluate evidence and summon the parties to hear them and render a reasoned decision. The adjudicatory function of the Registrar is quasi-judicial in nature and not administrative. The authorities exercising such adjudicatory functions possess what is understood in law as “trapping of a Court”. The expression refers to those essential features that characterize judicial proceedings, including the power to receive evidence, summon the parties, adjudicate dispute between the parties by binding decision affecting their rights. The presence of such attributes brings the proceedings before the Registrar within the broader framework of adjudication of civil rights. When such a determination is carried out in appeal under Section 91, the learned Single Judge exercises appellate jurisdiction over a decision, which is in substance akin to

a civil adjudication.

13. The appellate proceedings before the High Court are, thus, not in the nature of original jurisdiction but are in continuation of the adjudicatory proceedings initiated by the statutory authority (Registrar). Thus, permitting a Letters Patent Appeal in such circumstances would defeat the express mandate of Section 100A of the CPC, by allowing a further appeal in a judgment rendered in an appellate jurisdiction. Moreover, Clause 15 of the Letters Patent itself does not support and specifically excludes orders passed in the appellate proceedings by the learned Single Judge, which are not original in nature, but continuation of original proceedings.
14. The bar under Clause 15 of the Letters Patent squarely applies and the appellants cannot seek a further round of appeal against the judgment of the Single Bench of this Court. It is, thus, contended that in view of the express bar under Clause 15 of the Letters Patent; the scheme of Section 91 of the Trade Marks Act, 1999 brought in supersession of the erstwhile provision of TMM Act'1958 which provided two levels of appeal before the High Court; as well as Section 100A of the CPC, the present set of intra-court appeals filed under Clause 15 of the Letters Patent are not maintainable and hence, liable to be dismissed as such.
15. In support of above submissions, Mr. Rushvi Shah, learned advocate for the respondent no.2 has relied

upon the following decisions :-

1. Vithal Bogra Shetty vs. Board of Trustees, 2022 (0) AIJEL - HC 244584
 2. ITALFARMACO SPA v. Controller of Patents & designs, 2025 SCC OnLine Mad 13148
 3. Glorious Investment Ltd. v. Dunlop International Ltd., 2025 SCC OnLine Cal 8647
 4. Northern Railways v. Harleen Kaur, 2025 SCC OnLine Del 1317
 5. Vishal Prafulsingh Solanki & Ors. vs. Controller of Patent and Designs & Ors., 2026 -OS 7027-DB
16. Mr. Pratik Y. Jasani, learned advocate for the appellants, in rebuttal, relied upon the following decisions to assert that in view of the settled law, the Letters Patent Appeals are to be held as maintainable:-
1. National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd., (1953) 1 SCC 794
 2. Sharda Devi v. State of Bihar, (2002) 3 SCC 705
 3. Subal Paul v. Malina Paul, (2003) 10 SCC 361
 4. Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333
 5. Ram Kishan Fauji v. State of Haryana, (2017) 5 SCC 533
 6. Promoshirt SM SA v. Armassuisse, 2023 SCC OnLine Del 5531
 7. Nashik Hing Supplying Company Vs. Annapurna Gruh Udyog Bhandar, 2003 (0) AIJEL - HC 208406

8. Gujarat State Road Transport Corporation v. Firoze M. Mogal, 2013 SCC OnLine Guj 8638
9. Resilient Innovations (P) Ltd. v. Phonepe (P) Ltd., 2023 SCC OnLine Del 2972
10. Rajdhani Cooperative Housing Society Ltd. Vs. State of Gujarat, 2024(0) AIJEL – HC0248573

Judgements relied by the learned counsel for the appellant on maintainability

17. It was submitted that in **National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd. [(1953) 1 SCC 794]**, the specific question before the Apex Court was about the maintainability of appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge under Section 76 of the Trade Marks Act, 1940 (in short as the TM Act' 1940).
18. The Letters Patent Appeal under clause 15 of the Letters Patent of the Bombay High Court therein was preferred against the order of the High Court (Single Bench) under Section 76 of the TM Act'19540 which was and allowed restoring the order of the Registrar with costs throughout.
19. Considering the challenge to the said order in Letters Patent Appeal, the Apex Court therein has noted the following part of clause 15 of the Letters Patent :-

"And We do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant

to section 108 of the Government of India Act."

20. The submission before the Apex Court was that the provision of Clause 15 would not be attracted to an appeal preferred to the High Court under Section 76 of the Trade Marks Act, 1940 and further that the clause will have no application in a case where the judgement impugned could be said to have been delivered pursuant to Section 108 of the Government of India, 1915. Both these objections were rejected being not well-founded noticing the provisions contained in Section 76(1) of TM Act'1940, and the intent and purpose of Section 108 of the Government of India Act, 1915.
21. It was held that the Trademark Act, 1940 did not provide or lay down any procedure for the future conduct of that appeal in the High Court and section 77 therein provided that the High Court may make rules in the matter. Once the appeal reached a High Court it had to be determined according to the rules of practice and procedure of that Court and according to the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court.
22. It was held that Section 108 of the Government of India

Act, 1915 is an enabling enactment conferring power on the High Court of making rules to exercise its jurisdiction by Single Judges or by Division Bench. The power conferred by the said section is not circumscribed in any manner whatever and the nature of the power is such that it had to be conferred by the use of words of the widest amplitude. There can be no particular purpose or object while conferring the power in limiting it qua the jurisdiction already possessed by the High Court when in the other provisions of the Government of India Act, it was contemplated that the existing jurisdiction was subject to the legislative power of the Governor-General and the jurisdiction conferred on the High Court was liable to be enlarged, modified and curtailed by the Legislature from time to time.

23. It was argued therein that with the repeal of Section 108 of the Government of India Act, 1915, and of the enactment of its provisions in Section 223 of the Government of India Act of 1935 and later on in Article 225 of the Constitution of India, there had not been any corresponding amendment of clause 15 of the Letters Patent and the reference to section 108 in clause 15 of the Letters Patent could not, therefore, be taken as relating to these provisions. That being so, the High Court had no power to make rules in 1940 when the Trade Marks Act was enacted under the repealed section and the decision in appeal of the Single Judge of Bombay High Court could not be said to have been given

pursuant to section 108.

24. Repealing that, It was held that the power that was conferred on the High Court by Section 108 still subsists and it has not been affected by the subsequent amendments by the Government of India Act, 1935 or by the Constitution of India. On the other hand, it has been kept alive and reaffirmed with great vigour by these statutes. The High Courts still enjoy the same unfettered power as they enjoyed under section 108 of the Government of India. Act, 1915, of making rules and providing whether an appeal has to be heard by one Judge or more Judges or by Division Courts consisting of two or more Judges of the High Court. It was further held that the High Court was right in the view that reference in Clause 15 to Section 108 should be read as a reference to the corresponding provisions of the 1935 Act and the Constitution. There is no reasonable ground for holding that that rule of construction should not be applied in construing the Charters of the different High Courts, as enunciated in section 38 of the Interpretation Act and reiterated with some modifications in Section 8 of the General Clauses Act, which is of general application where statutes or Acts have to be construed. These Charters were granted under statutory powers and are subject to the legislative power of the Indian Legislature.
25. Further, it was observed that even if strictly speaking, the provisions of the Interpretation Act and the General

Clauses Act do not for any reason apply, there was no justification for holding that the principles of construction enunciated in those provisions have no application for construing these Charters. It was, thus, held that the High Court was perfectly justified in overruling the preliminary objection and holding that an appeal was competent from the judgment of one of the one Judge or the one Judge Bench of the Bombay High Court under Clause 15 of the Letters Patent.

26. In light of the controversy raised and adjudicated before the Apex Court in **National Sewing Thread Co. Ltd. (supra)**, we may note, at this juncture, that the issue raised before us is completely different and distinct, inasmuch as, we are called upon to answer the following questions:-

(i) Whether the second round of appeal against an order passed by the single judge of this court in appeal under Section 91 of the Trade Marks Act, 1999 would be maintainable in view of the language employed in Clause 15 of the Letters Patent?

(ii) Whether the order passed by the Single Judge of this Court in appeal under Section 91 of the Trade Marks Act, 1999 can be said to be an order passed in the original jurisdiction of the High Court attracting Clause 15 of the Letters Patent, in view of the language employed therein?

(iii) Whether the repeal of the Trade Marks and

Merchandise Marks Act, 1958, whereunder the legislature has taken away the second round of statutory appeal provided therein under Section 109(5) before the Division Bench of the High Court against the order of a Single Bench passed in sub-section (4) of Section 109, while enacting the Trade Marks Act, 1999, may be factored in as conscious omission of the second level of appeal to answer the question of maintainability of Letters Patent Appeal under clause 15 of the Letters Patent.

27. In **Sharda Devi (supra)**, reference was made in view of the conflicting decisions on the question as to whether a Letters Patent Appeal was maintainable against the judgment and decree of the learned single judge of the High Court in an appeal preferred under Section 54 of the Land Acquisition Act, 1894. Answering the said question, it was observed therein in paragraph 9 as under:-

“9. A Letters Patent is the charter under which the High Court is established. The powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of Appeal, against a judgment of a single Judge, the right to entertain the appeal would not get excluded unless the concerned statutory enactment excludes an appeal under the Letters Patent.”

28. Considering the language employed in Section 54 of the Land Acquisition Act, 1894, it was held that Section 54 of the Land Acquisition Act, 1894 does not exclude an

appeal under the Letters Patent. The word "only" in the phrase 'an appeal shall lie only to the High Court' occurring immediately after the non-obstante clause in Section 54, refers to the forum of appeal. In other words, it provides that the appeal would lie to the High Court and not to any other court, e.g. the District Court. The term, "an appeal" does not restrict it to only one appeal in the High Court. The term 'an appeal' would take within its sweep even a Letters Patent Appeal. If read in any other manner, there would be a conflict between Section 54 and the provisions of the Letters Patent. It was, thus, concluded that under Section 54 of the Land Acquisition Act, 1894, there is no bar to the maintainability of the Letters Patent Appeal. Hence, the reference was answered upholding the three-Judge Bench of the Apex Court in **Basant Kumar vs. Union of India [(1996) 11 SCC 542]**. Para '9' of **Basant Kumar (supra)** as noted in paragraph '8' in **Sharda Devi (supra)**] reads that:-

"9. The next question is whether the LPA would lie against the judgment of the learned Single Judge? It is a settled legal position that under Section 54 of the Land Acquisition Act, the appeal would lie to the High Court; when the appeal on the basis of the pecuniary value was decided by a Single Judge necessarily, it being the judgment of the Single Judge, an appeal would lie to the same Court in the form of LPA to the Division Bench. The Division Bench was not right in holding that the LPA would not lie to the High Court against the judgment of the Single Judge. To that extent, the view of the High Court is not correct."

29. At this juncture, we may simply note that the judgment **Sharda Devi (supra)** was rendered by the Apex Court the language employed in Section 54 of the Land Acquisition Act, 1894, i.e. the scheme of the Act itself.
30. In **Subal Paul (supra)**, the issue before the three bench of the Apex Court was as to whether the Letters Patent Appeal would lie against the judgment of a learned Single Judge of the High Court passed under Section 299 of the Indian Succession Act, 1925. It was argued therein that the question was squarely covered by the previous decision of the Apex Court in **Sharda Devi (supra)**. While determining the question as regards Clause 15 of the Letters Patent, it was observed that the court is required to see as to whether the order sought to be appealed against is a judgment within the meaning thereof or not. Once it is held that irrespective of the nature of the order, meaning thereby whether interlocutory or final, a judgment has been rendered, clause 15 of the Letters Patent would be attracted.
31. Reading the language of Clause 15 of the Letters Patent, it was noted that Clause 15 permits an appeal against the order passed by the Single Judge of the High Court in a second forum. **National Sewing Thread Co. Ltd. (supra)**, was relied to hold that a Letters Patent Appeal against a judgment of a Single judge of the High Court exercising the power under Section 76 of the Trade Marks Act, 1940 would be maintainable, while noticing that said decision had been followed by the Apex Court

in **Maharashtra State Financial Corporation v. Joyce Drags and Pharmaceuticals Pvt, Ltd and On, [(1991) 2 SCC 637]**, however, distinguished in **Union of India and Ors, v. Aradhana Trading Co. and Ors, [(2002) 4 SCC 447]** on the ground that under the Arbitration Act, there exists a specific provision relating to an appeal.

32. It was held therein that the order passed by the Single Judge under Section 299 of the Indian Succession Act, 1925 was appealable under Section 15 of the Letters Patent and that objection in regard to maintainability of Letters Patent Appeal was rightly overruled by the High Court.
33. In **Fuerst Day Lawson Ltd. (supra)**, the question was as to whether an order, though not appealable under Section 50 of the Arbitration and Conciliation Act, 1996, would nevertheless be subject to appeal under relevant provisions of the Letters Patent of the High Court. The issue framed therein was “even though the Arbitration Act does not envisage or permit an appeal from the order, the party aggrieved by it can still have his way by-passing the Act and taking recourse to another jurisdiction”. It was argued therein that the jurisdiction of the High Court under Letters Patent is an independent jurisdiction and as long as the order qualifies for an appeal under the Letters Patent, an appeal from that order would be, undoubtedly, maintainable before the High Court.

34. It was observed that the correct answer to both the questions would depend upon how the 1996 Act is to be viewed. Do the provisions of the 1996' Act constitute a complete code for matters arising out of an arbitration proceedings, the making of the award, and the enforcement of the award? If the answer to the question is in affirmative, then, obviously, all other jurisdictions, including the Letters Patent jurisdiction of the High Court, would stand excluded. But in case, the answer is in negative, the aforesaid contentions must be accepted.
35. Considering the entire scheme of the Arbitration and Conciliation Act, 1996, as well as, Indian Arbitration Act of 1940, it was held therein that, the Arbitration Act of 1940, from its inception, right through 2004, (in **P.S. Sathappan v. Andhra Bank Ltd. [(2004) 11 SCC 672]**) was held to be a self-contained code. The Arbitration Act, 1996, which consolidates, amends and designs the law relating to arbitration, to bring it, as much as possible, in harmony with the UNCITRAL Model, must be held to be a self-contained and exhaustive legislation. It carries with it a negative import, that only such acts which are mentioned in the Act, are permissible to be done and acts, or things not mentioned therein are not permissible to be done.
36. The Letters Patent appeal was, thus, excluded by one principle where the special Act sets out a self-contained code, the applicability of the general law procedure

would be impliedly excluded. The conclusion regarding the exclusion of a Letters Patent appeal has been, thus, arrived in two ways; as said, (i) on a micro basis, by examining the scheme devised by Sections 49 and 50 of the 1996 Act, and the radical change that it has brought about in the earlier provision of appeal under Section 6 of the 1961 Act.; And (ii) the other on a macro basis, by taking into account the nature and character of 1996 Act, as a self-contained and exhaustive code in itself. It was concluded that no Letters Patent appeal will lie against an order, which is not appealable under Section 50 of the Arbitration and Conciliation Act, 1996.

37. In **Ram Kishan Fauji (supra)**, the question was as to the maintainability of the Letters Patent Appeal under Clause 15 of the Letters Patent against an order passed by the Single Judge of the High Court in a writ petition in the nature of certiorari for quashing of the orders passed by the Lokayukta recommending for registration of an FIR against the petitioner therein under the provisions of the Prevention of Corruption Act, 1988.
38. It was argued before the Apex Court that the post held by Lokayukta and Upa-lokayukta are quasi-judicial in nature. Their functioning has to be given the same character and once they are clothed with such functioning and action taken by them is subject to challenge before the High Court under Article 226 of the Constitution seeking a writ of certiorari for quashment of the same, the adjudication has to be regarded as civil

in nature. Since the opinion and recommendation of the Lokayukta was challenged in a writ court, the jurisdiction sought to be exercised is under Article 226 of the Constitution of India and resultantly, is amenable to correction in intra-court appeal.

39. The Apex Court while reading clauses 15, 17 and 18 of the Letters Patent, as applicable to erstwhile Punjab & Lahore High Courts and clause 10 of the said Letters Patent establishing the Lahore High Court, *pari materia* to Clause 15 of the Letters Patent of the Chartered High Courts, has noted Clause 17 and 18 in paragraph '22' as under :-

"22. Clauses 17 and 18, being pertinent, are extracted below:-

"17. And We do further ordain that the High Court of Judicature at Lahore shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such court to reserve any point or points of law for the opinion of the said High Court."

40. It was then noted that a two judges bench in **Umaji Keshao Meshram & others v. Radhikabai & another [1986 (Supp.) SCC 401]**, has held that the petition filed under Article 227 of the Constitution and under the Rules of the High Court, it having been heard by a Single Judge, under Clause 15 of the Letters Patent of that High Court, an intra-court appeal against the decision of the learned Single Judge was expressly barred considering the distinction between the exercise of the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. Discussing **Radhey Shyam and another v. Chhabi Nath and others [(2015) 5 SCC 423]**, it was held therein that when the order of the civil court is challenged under Article 227 of the Constitution of India, no intra-court appeal would lie from such challenge. The principles culled out therein about the maintainability of the appeal under clause 15 of the Letters Patent in para '42' are as under :-

“42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:

42.1. An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2. The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

42.3. A writ petition which assails the order of a

civil court in the High Court has to be understood, in all circumstances, to be a challenge under Article 227 of the Constitution and determination by the High Court under the said article and, hence, no intra-court appeal is entertainable.

42.4. The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same.”

41. In the facts of the case at hand, however, while noticing that the writ petition was filed under Article 226 of the Constitution of India, for quashing of the recommendation of the Lokayukta, where the learned Single Judge has exercised criminal jurisdiction of the High Court, and that the vital factor for determination of the maintainability of an intra court appeal is the nature of the jurisdiction invoked by the party and the true nature of the order passed by the learned Single Judge. It was, thus, held that in view of the clear exclusion in Clause 15 of the Letter Patent, the Single Bench order being an order made in exercise of the criminal jurisdiction, the Letters Patent Appeal was not maintainable before the Division Bench.
42. In **Promoshirt SM SA (supra)**, the Division Bench of the Delhi High Court had dealt with the preliminary objection as to the maintainability of the Letters Patent Appeal against the order of the Single Bench in terms of Section 91 of the TM Act’ 1999. The respondents therein had taken a preliminary objection to the

maintainability of the Letters Patent Appeal in light of Section 100A of the Code of Civil Procedure. The arguments were also on the legislative amendments brought by the 'TM Act' 1999, which is a departure from Section 109(5) of the TMM Act' 1958. It was argued that absence of a provision akin to Section 109(5) of TMM Act' 1958 also lends credence to the intent of the Legislature being to take away the right of a further appeal against a judgment and order rendered by a Single Judge while exercising appellate jurisdiction.

43. In light of the aforesaid, it was observed in paragraph 30 as under:-

"30. Having noticed the rival submissions which were addressed, we find that the principal issue which falls for determination would be whether Section 100-A of the Code, while prescribing that no further appeal would lie from an original or appellate decree or order rendered by a Single Judge of a High Court would also extend to appeals that may be preferred in terms of the Letters Patent and relate to a judgment or order rendered by a Single Judge of the Court in terms of Section 91 of the 1999 TM Act. Undisputedly, Section 91 of the 1999 TM Act, confers a right on a person aggrieved to approach the High Court by way of an appeal against any order or decision of the Registrar of Trade Marks. The 1999 TM Act as it presently stands also does not carry a provision *pari materia* to Section 109(5) as it existed in the 1958 TM Act. The position of an appeal thus appears to have reverted back to the position as it existed in the 1940 TM Act. Thus insofar, as the subject of trademarks is concerned, the only period where a second appeal was specifically

provided for was under the 1958 TM Act. In fact this aspect of a legislative shift was one which was highlighted by Mr. Anand in support of his submission that a further appeal is no longer envisaged. However, we shall deal with that submission at an appropriate stage of this decision.”

44. After extensive deliberation on the legal provisions and the decisions of the Apex Court, as noted hereinabove, it was held that Section 100A would appear to be aimed at eclipsing and shutting out the remedy of an intra court appeal which may otherwise be available under a Letters Patent when it comes to matters governed by the Code of Civil Procedure. The intent of Section 100A of the Code would be confined to a second appeal when preferred against a judgment of a Single Judge exercising appellate powers provided it pertained to a decree or order as defined by the Code. The bar would, thus, only operate where the decree or order against which the appeal was preferred before the Single Judge, was of a civil court.
45. The arguments that the Registrar of Trade Marks would qualify the standards of a tribunal having “trappings of a Court” to justify invocation of Section 100A to bar Letters Patent Appeal against the order of a Single Bench under Section 91 of the TM Act’ 1999, was though seriously doubted but not dealt with.
46. It was held that in addition to the above, the Letters Patent Appeal remedy would also not be available where

a special statute subjects the appeal remedy to follow the rules applicable to appeals as embodied in the Code of Civil Procedure. Once the appeal is made subject to the Rules incorporated in the Code, all restrictions in appeal including Section 100A, would get attracted and attached. The appeal provision in such a case would be deemed to have consciously adopted all restrictions as put in place under the Code of Civil Procedure and would override the Letters Patent provision.

47. Relying upon the Full Bench of Delhi High Court in **Avtar Narain Behal v. Subhash Chander Behal, [2008 SCC OnLine Del 1154]**, it was noted that exclusion in Section 100A of the Code has been applied in terms of Section 299 of the Indian Succession Act therein, in view of clear and unambiguous terms providing appeals to the High Court "in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals". It was, thus, held that as is manifest from a plain reading of Section 299, the avenue of appeal was made subject to the provisions of the Code dealing with appeals, Section 100A, thus, clearly apply.
48. On a comparative analysis of the provisions of Section 76 of the Trade Marks Act 1940, Section 109 of the TMM Act' 1958 and Section 91 of the TM Act' 1999, it was observed in paragraph '45' as follows:

"45. As would be evident from a reading of those statutory provisions, the only time when a second appeal was explicitly provisioned for was when the

1958 TM Act held the field and by virtue of Section 109(5) such an appeal was envisaged. Undisputedly, a provision akin to Section 109(5) neither existed in the 1940 TM Act nor does an identical provision appear in the 1999 TM Act. Significantly, however, both the appellate provisions as they existed in the 1940 TM Act as well as the 1958 TM Act specifically provided that appeals filed in terms of those provisions before the High Court would be governed by the provisions of the Code. This is manifest from Section 76(3) and Section 109(8) of the respective statutes. Those sub-sections in unambiguous terms provided that the provisions of the Code would apply to appeals before the High Court. However, Section 91 of the 1999 TM Act does not incorporate any such prescription. That takes us to the principal question of whether Section 100-A of the Code can be read or construed as taking away the letters patent provision of appeals and which presently does envisage an appeal being preferred before a Division Bench of our Court notwithstanding the judgment of the Single Judge having been made in the exercise of appellate jurisdiction.”

49. The Division Bench of the Delhi High Court in **Promoshirt SM SA (supra)** has also relied upon the decision of the Apex Court in **National Sewing Thread Company Limited (supra)** to note in paragraphs ‘46’ and ‘47’ as under :-

“46. We note that way back in the year 1953, when *National Sewing Thread Co.*, came to be rendered by the Supreme Court, a question arose as to whether a letters patent appeal against a judgment rendered by a Single Judge of the Bombay High Court would be maintainable in the absence of Section 76 of the 1940 TM Act incorporating anything to the contrary. Section 76 as it existed in that statute did not embody a provision akin to Section 109(5) which formed part

of the 1958 TM Act. Notwithstanding, the silence in this respect in Section 76 of the 1940 TM Act the Supreme Court observed as follows:—

“6. The appellants preferred an appeal against the order of the Registrar to the High Court of Bombay as permitted by the provisions of Section 76 of the Trade Marks Act. Shah, J. allowed the appeal, set aside the order of the Registrar and directed the Registrar to register the mark of the appellants as a trade mark. From the judgment of Shah, J. an appeal was preferred by the respondents under Clause 15 of the Letters Patent of the Bombay High Court. The appeal was allowed and the order of the Registrar was restored with costs throughout. Hence this appeal.

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9. The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane, L.C. in *National Telephone Co. Ltd. v. Postmaster*

General [National Telephone Co. Ltd. v. Postmaster General, [1913] A.C. 546 (HL)], in these terms : (AC p. 552)

“... When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches.”

The same view was expressed by Their Lordships of the Privy Council in *Adaikappa Chettiar v. Chandrasekhara Thevar [Adaikappa Chettiar v. Chandrasekhara Thevar, 1947 SCC OnLine PC 53 : (1946-47) 74 IA 264]* wherein it was said : (IA p. 271)

“... where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal....”

10. Again, in *Secy. of State for India in Council v. Chelikani Rama Rao [Secy. of State for India in Council v. Chelikani Rama Rao, 1916 SCC OnLine PC 42 : (1915-16) 43 IA 192 : ILR (1916) 39 Mad 617]*, when dealing with the case under the Madras Forest Act, Their Lordships observed as follows : (IA p. 197)

“... It was contended on behalf of the appellant that all further proceedings in courts in India or by way of appeal were incompetent, these being excluded by the

terms of the statute just quoted. In Their Lordships' opinion this objection is not well founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply."

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

47. As would be evident from the passages extracted hereinabove, *National Sewing Thread Co.* held that once an appeal reaches the High Court, its course would have to be determined in accordance with the rules of practice and procedure of that Court. The Supreme Court in *National Sewing Thread Co.* thus upheld the right of a litigant to institute a further appeal in terms of the letters patent provision which applied in the absence of anything contrary contained in the 1940 TM Act. The principles enunciated in that

decision would thus lead one to conclude that a further appeal in terms of a letters patent provision would be maintainable in the absence of any contrary provision or intention being expressed either in the statute from which those proceedings emanated or any other general law. We would of course have to bear in consideration that *National Sewing Thread Co.* came to be rendered prior to the introduction of Section 100-A of the Code.”

50. As regards the scope of Letters Patent provisions as applicable to the Delhi High Court *pari materia* with Clause 15 of the Letters Patent applicable to the present appeal, it was noted in paragraph ‘32’ as under:-

“32. As would be evident from a reading of the first part of Clause 10 of the Letters Patent, it bars a third appeal before this Court. The issue which therefore arises is whether Section 100-A of the Code can be interpreted or construed as debarring even a second appeal which was otherwise maintainable before this Court notwithstanding it having arisen from a judgment or order rendered by a Single Judge exercising appellate jurisdiction.”

51. It was, concluded in **Promoshirt SM SA (supra)**, that on consideration of the provisions of TM Act’ 1999 including Section 91, no provision of TM Act’ 1999 stipulates that no further appeal would lie or that when an appeal preferred, it would be governed by the provisions of the Code, insofar as, they relate to appeals. In absence of any such provision, either regulating or restricting right of appeal in Section 91 of the TM Act’ 1999, the Letters Patent Appeal remedy would not be

barred by Section 100A of the Code and would be available.

52. In **Nashik Hing Supplying Company (supra)**, this High Court was called upon to deal with the objections as to the maintainability of appeal before the Division Bench under Section 109(5) of the 'TMM Act' 1958 on the ground that appeal would be barred by Section 100A CPC. The Division Bench rejected the said objections on the grounds that :-

(i) The substantive right of appeal provided in the statute can be taken away only by express words or necessary intendment.

(ii) Section 100A CPC, though opens with non-obstantive clause, it is part of general procedural law and the 'TMM Act' 1958 is a special law providing for appeal only subject to the provisions of the Act.

(iii) Section 100A brought by 2002 CPC amendment does not derogate a substantive right of appeal expressly conferred by a special statute and Section 109(5) of TMM Act'1958 is not repealed by Section 100A.

(iv) The quasi judicial character of the Registrar makes no difference as a Registrar under the TM Act' 1999 is not a Civil Court as contemplated by

the CPC. Section 100A, as such, cannot bar a statutory appeal before the Division Bench against the decision of a Single judge in exercise of its appellate jurisdiction over any authority which is not a civil court.

53. Reliance is also placed on the decision of this Court in **Rajdhani Co-operative Housing Society Ltd. Vs. State of Gujarat [2024 (0) AIJEL-HC248573]** and of the Delhi High Court in **Resilient Innovations (P) Ltd. (supra)**.
54. Referring to the Full Bench judgment of this Court in **Gujarat State Road Transport Corporation (supra)**, it was submitted that in the said case, the Full Bench has only considered the distinction between the exercise of original writ jurisdiction under Article 226 of the Constitution and the exercise of supervisory jurisdiction under Article 227 of the Constitution over the civil court or tribunal having “trappings of the court”. The said decision cannot be taken as a binding precedent of law on the issues raised herein.
55. With the above, it was vehemently argued that the preliminary objection raised by the respondent as to the maintainability of the present Letters Patent Appeal is liable to be rejected, considering the law laid down in the aforesaid decisions.

Judgments relied by learned Counsel for the respondents:-

56. In rebuttal, the learned Counsel for the respondent relying upon the decisions in **Vithal Bogra Shetty (supra)**, **ITALFARMACO SPA(supra)**, **Glorious Investment Ltd. (supra)**, **Northern Railways (supra)** and **Vishal Prafulsingh Solanki (supra)** in support of the preliminary objections, would submit that in light of the scheme of Section 91 of the TM Act 1999, Section 100A CPC and Clause 15 of the Letters Patent, the instant Letters Patent Appeal being directed against an order passed by the learned Single judge in a statutory appeal under the Trade Marks Act, would not be maintainable.
57. The decision in **Vishal Prafulsingh Solanki (supra)** was rendered in a proceeding in Letters Patent Appeal, a commercial appeal under Section 13 of the Commercial Courts Act, 2015 filed before the Division Bench of the Bombay High Court against the judgment of the learned Single Judge in Commercial Misc. Petition filed under Section 117A of the Patents Act, praying for quashing and setting aside of the order passed by the Assistant Controller of Patent and Designs refusing the Patent Application. The submission of the learned counsel for the appellant therein was that :-
- (i) The order passed by the Single Judge is in exercise of the original jurisdiction conferred in him.

- (ii) The Appeal is maintainable under Section 13(1-A) of the Commercial Courts Act, 2015 as the judgment passed by the learned Single Judge is a 'Decree'.
- (iii) The bar under Section 100A of CPC do not apply because the Assistant Controller of Patents is not a Court.

58. The respondent, on the other hand, raised an objection to the maintainability of the appeal under Section 13 on the ground that there is no provision for intra court appeal provided under the Patents Act read with the provisions of the Commercial Courts Act, 2015. It was argued therein that the appeal is a creature of statute and Section 117A of the Patents Act does not provide for any further appeal or any intra court appeal against the judgment of the Single Judge rendered by the High Court. While exercising appellate jurisdiction, right of appeal cannot be inferred or implied in absence of an express provision.

59. Answering the said issue, it was held by the Division Bench of the Bombay High Court that the Assistant Controller under Section 77 of the Patents Act is clothed with the powers of Civil Court while trying a Suit under the Code of Civil Procedure, in the wake of the proceedings before him and by exercise of this power, the Controller is empowered to hear any parties to the proceedings or to give any such party an opportunity to

be heard in regards to the application, which is filed for grant of patent or for amendment of a specification before exercising the discretion adverse to the applicant. It was noted that under the scheme of Chapter XV, including Section 77 read along with Sections 79 and 80, the evidence before the Controller is permitted to be given on affidavit, in absence of his directions to the contrary but where the controller thinks it right so to do, he may take oral evidence in lieu of, or in addition to, evidence by affidavit, or may allow any party to be cross-examined from the contents of the affidavit.

60. It is in light of the specific powers conferred upon the Controller General of Patents, Design and Trade Mark, appointed under Section 3 of the Trade Marks Act, 1999, it was held that the nature of extensive powers vested on the Controller, which includes the specific power in cases of anticipation as contemplated in Section 18 as well as the power conferred on him in case of potential infringement as well as the power to make orders regarding substitution of the applicants, the Controller of Patents plays a significant role and therefore, in the whole process of grant or refusal of patent, he is conferred with the powers of the Civil Court, as regards the application for grant of patent and his decision is appealable before the High Court.
61. The view of the Delhi High Court qua the powers of Registrar under the Trade Marks Act that it is not a Civil Court, however, was distinguished with the observation

that the powers conferred on the Registrar under the Trade Marks Act are not parallel to one exercised by the Controller of Patents under the Patents Act, 1970 and the Controller in the scheme of the statute, in discharge of his powers and functions would have to be treated as a tribunal having “trappings of a Civil Court”.

62. In light of the aforesaid, it was held that the appeal under Section 117 A of the Patents Act decided by the learned Single Judge being in the nature of First Appeal, no second appeal is maintainable under Section 13 of the Commercial Courts Act, 2015 and in view of Section 100A of the CPC providing for exclusion of a second appeal to the Division Bench, the preliminary objections as to the maintainability of the appeal was upheld, both in the wake of bar of Section 100A read with Section 13 of the Commercial Courts Act, 2015.
63. The Madras High Court in **ITALFARMACO SPA (supra)** was rendered in an intra court appeal against the order of the learned Single Judge under Section 117A of the Patents Act 1970. Taking note of Section 13(1) of the Commercial Courts Act, 2015, it was held therein that since the appeal has been provided to the High Court under Section 117A of the Patents Act, 1970, and Section 13 of the Commercial Courts Act contemplates that appeal shall lie from such order passed by the Commercial Division that are specifically provided in order XLIII of the Code of Civil Procedure, the intra court appeal under Section 15 of the Letters

Patent against the order in regular appeal under the Patents Act is not maintainable. Any expansion of the scope of the Commercial Courts Act will defeat its objectives and there is no ambiguity regarding appeals from decrees of Commercial Courts and Commercial Divisions under Section 13 of the said Act.

64. In **Glorious Investment Limited (supra)**, the appeal before the Division bench of the Calcutta High Court was against the order of the learned Single Judge under Section 91 of the TM Act' 1999. It was argued on behalf of the respondent therein that no further appeal would lie from the judgment and decree of the Single Judge, in view of the bar contained in Section 100A of the code.
65. The Calcutta High Court relying upon the decision of the Apex Court in **Kamal Kumar Dutta & Anr. vs. Ruby General Hospital Limited & Ors. [(2006) 7 SC 613]**, has noted that the appeal is a vested substantive right and such right could be taken away only by subsequent enactment either expressly or by necessary intendment. The Parliament while inserting Section 100A of CPC with the Amendment Act 22 of 2002 w.e.f. 01.07.2002 took away the Letters Patent power of the High Court in the matter of appeal against an order of the learned Single Judge to the Division Bench. **Kamal Kumar Dutta (supra)** was decided by the Apex Court in the context of Section 10F of the Companies Act, which confers right of appeal to the High Court against any order of the Company Law Board.

66. Applying the provisions of Section 100A of the Code, finding that the Company Law Board is a Tribunal having all the trappings of a Civil Court, it was held therein that the Company Law Board was constituted for shouldering the same judicial business that the Single Bench of the High Court did prior to the amendment of the Companies Act, 1956 in the year 1991 and further under the relevant provisions of the 1956 Act, the Company Law Board discharged functions akin to that of a Civil Court. It is to be considered as a Tribunal having all the trappings of the Court and hence, Letters Patent Appeal against the order of the learned Single Judge arising out of the order of the Company Law Board, was held to be barred by Section 100A of the Code of Civil Procedure.
67. The Calcutta High Court therein relying upon the decision of the Apex Court in **Kamal Kumar Dutta (supra)**, and other decisions making a distinction between a court and a tribunal, has examined the question as to whether the Registrar under the 'TM Act' 1999 can be said to be a tribunal having trappings of the Civil Court.
68. Considering section 127 of the TM Act 1999 providing for the powers of the Registrar, it was held that the Registrar has all powers including power to review its decision and to impose costs, that a civil court has for the purposes mentioned in the said Section. The order as to costs passed by the Registrar has been made

executable as a decree of a Civil Court. The provisions of Chapter III of the 1999 Act would further reveal that the Registrar is ultimately to take a decision on the application filed before it by either party accepting the application or rejecting the same upon considering the opposition thereto, if any. The Trademarks Rules 2017 framed in exercise of power under Section 157 of 1999 Act provides a detailed procedure for examination of an application for registration, hearing of the objections thereto and rendering a decision by the Registrar prior to its acceptance.

69. It was held that a holistic reading of various provisions of 1999 Act and the Rules made thereunder leaves no room for doubt that the Registrar has almost all the trappings of the court for the purpose of deciding as to whether the mark should be registered in favour of a person or not. Such a decision is taken on the basis of the evidence adduced by the person concerned and upon considering the opposition to register those application along with the evidence in support of the opposition.
70. The Registrar has a duty to act judicially and fairly and even if no objection is filed, the Registrar has a duty to objectively scrutinize, examine the facts of the evidence adduced in order to determine if the trademark meets the requirement for registration under the 1999 Act and then make a decision. The decision taken by the Registrar to either accept the request for registration or to reject the same directly makes and determines the

applicant's legal rights and liabilities and in case of an opposition the rights and liabilities of both the parties. This is an essential characteristic of a judicial function.

71. Thus, applying the ratio of **Kamal Kumar Dutta (supra)**, it was held that the Registrar having trappings of the Court, the Letters Patent Appeal against an order passed under section 91 of the TM Act 1999 would not be maintainable. Further, referring to Section 109 of the TMM Act 1958, it was observed in paragraphs '33 and 34' as under :-

"33. The predecessor Act of the 1999 Act thus specifically provided a forum for second appeal. Upon the repeal of the 1958 Act, a similar provision was consciously avoided by the legislature while creating an Appellate Board for hearing appeals under the 1999 Act. Should such omission be held to be without reasons? It is settled law that deletion of a provision from a statute is to be given due weightage in probing the legislative intent. Why should a similar consideration not be factored in while considering a successor legislation given the fact that a specific provision for appeal which was there in the predecessor Act is not there in the successor Act?

34. Originally (i.e. prior to the 2021 amendment) since Section 91 of the 1999 Act provided for appeal against an order of the Registrar before the Intellectual Property Appellate Board (hereafter "the Board") and no further, the orders passed by the Board were assailed either by way of a writ petition under Article 226 or by way of a revision under Article 227 of the Constitution of India. All of these constitutional remedies are discretionary in nature and cannot be exercised as a matter of right. To wit, the pre-amendment 1999 Act also, at least seemingly, did not encourage a second

appeal. Subsequently, the Tribunals Reforms Act, 2021 was enacted and thereby several amendments were effected in the 1999 Act. One of them was the change of the appellate forum under Section 91 from the Board to the High Court. Notably, apart from the change of the forum of appeal, the other portion of Section 91 was left untouched. Should the clear legislative intent in the special law be then allowed to be overridden by a long drawn interpretative process and by reading the same to be making room for Letters Patent appeals? We think not. It is settled law that no appeal can be preferred without there being any provision therefor. It is equally settled that a special statute may exclude a general appellate provision both expressly as well as by implication. Here the exclusion is express by application of Section 100A and is tacitly implied by the exclusion of the second appellate provision in the present statute which was there in the predecessor statute."

72. The decision in **Avtar Narain Behal (supra)**, of the Full Bench of the Delhi High Court has also been recorded in paragraph 39 in the following manner :-

"39. *Avtar Narain Behal (supra)* is a Full Bench judgment of the Delhi High Court holding (in the concluding portion of paragraph 22 of the ILR Report) that "The language of Section 100A does not suggest that the exclusion of the right of appeal available under the Letters Patent is confined only to the matters arising under the Code and not under any enactments"."

73. In **Vithal Bogra Shetty (supra)**, decided by the Gujarat High Court, the question was about the maintainability of Letters Patent Appeal against the order of the learned Single Judge, in a petition filed under Articles 226 and

227 of the Constitution of India challenging the order passed by the Additional District Judge in Regular Civil Suit, confirming the order passed by the competent authority under the Bombay Public Premises (Eviction of Unauthorised Occupants) Act, 1971. While deciding the question whether the intra court appeal is maintainable against the Single Bench, it was held that :-

"13. Clause 15 of the Letters Patent Act does not provide an appeal against the judgment or order passed by a learned Single Judge of this Court in a petition under Article 227 and an appeal will lie if the judgment or order is passed in petition under Article 226. Where a petition is filed both under Article 226 and 227 of the Constitution of India, it will have to be considered whether the point raised in the petition arose for adjudication for the first time before the High Court. If the challenge in the petition is with respect to the points already adjudicated upon by the subordinate court or tribunal, then it will have to be held that the supervisory jurisdiction of the High Court was invoked and not the original jurisdiction. The relief prayed for and granted by the court is also a factor that would indicate whether the petition was filed under Article 226 or 227. In case where it can be said that the petition would fall both under Article 226 and Article 227, then it would be proper to consider the petition as the one filed under Article 226 of the Constitution of India and in those cases an appeal would lie under Section 15 of the Letters Patent Appeal Act.

14. The proceeding under Article 226 is an original proceeding and when it concerns civil right, it is an original civil proceeding. The proceeding under Article 227 is not an original proceeding. An intra-court appeal does not lie against the judgment of a learned Single Judge when the power of superintendence is exercised by examining the

order of a subordinate court. The Hon'ble Apex Court in LIC's case referred to supra, has held that an appellate officer while exercising the power under Section 9 of PP Act does not act as a persona designata but in his capacity as a pre-existing judicial authority in the District (being a District Judge or Judicial Officer designated by the District Judge, possessing essential qualification). Further, the order passed by the District Judge under PP Act is in the capacity of an appellate court and it would part-take the order of the subordinate court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not Article 226 thereof. Therefore, the Letters Patent Appeal against the judgment of a learned Single Judge would not be maintainable."

74. A recent decision of Delhi High Court in **Northern Railways v. Harleen Kaur (supra)** has been placed before us to submit that the Delhi High Court has held that the jurisdiction available to the High Court under Article 227 of the Constitution of India being primarily in the nature of superintendence, the Letters Patent Appeal would not lie against the Single Judge decision in a petition under Article 227 of the Constitution of India.
75. Having heard the learned counsel for the parties and perused the record, in light of the submissions made before us, the following questions are arising for our consideration :-
- (i) Whether the Registrar in exercise of its adjudicatory powers and functions under the TM Act, 1999 can be said to be a tribunal having trappings of a Civil Court, i.e., be a tribunal akin to

a Civil Court?

- (ii) If the answer to question no. (i) is in affirmative, what would be the impact and effect of Section 100A of the Code of Civil Procedure in the present proceedings?
- (iii) The resultant question would be whether intra court appeal under Clause 15 of Letters Patent would be maintainable against the order of the learned Single Judge exercising appellate jurisdiction under Section 91 of the Trademark Act?

76. To answer these questions, we would first like to go through the scheme of the TM Act, 1999, which is a special enactment, enacted to amend and consolidate the law related to trademarks, to provide for registration and better protection of trademarks for goods and services and for the prevention of the use of fraudulent marks. Section 3 as contained in Chapter II of the Act provides for appointment of the Registrar of trademarks for the purposes of the Act by the notification of the Central Government who shall be authorized to discharge the functions of the Registrar under the Act.

77. Section 5 provides for establishment of a Trademark Registry and provides that the Trademark Registry established under the TMM Act, 1954 shall be the Trademark Registry under this Act. Under sub-section (3), the Central Government by notification in the official

gazette may define the territorial limits within which an office of the trademarks registry may exercise its functions. There shall be a seal of the trademarks registry as per sub-section (4) of Section 5..

78. Other provisions in Chapter II provides for keeping a register of trademarks, the grounds for refusal of registration, prohibition of registration in certain cases and registration of parts of trademark and of trademarks as a series, registration as associated trademark and the effect of registration of parts of a mark.
79. Chapter III provides procedure and duration of registration. Sections 19 to 22 providing procedure for registration contained in Chapter III are relevant to be noted hereinunder :-

"19. Withdrawal of acceptance.—Where, after the acceptance of an application for registration of a trade mark but before its registration, the Registrar is satisfied—

(a) that the application has been accepted in error; or

(b) that in the circumstances of the case the trade mark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

20. Advertisement of application.—(1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the conditions or limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner:

Provided that the Registrar may cause the application to be advertised before acceptance if it relates to a trade mark to which sub-section (1) of section 9 and sub-sections (1) and (2) of section 11 apply, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do.

(2) Where—

(a) an application has been advertised before acceptance under sub-section (1); or

(b) after advertisement of an application,—

(i) an error in the application has been corrected; or

(ii) the application has been permitted to be amended under section 22

the Registrar may in his discretion cause the application to be advertised again or in any case falling under clause (b) may, instead of causing the application to be advertised again, notify in the prescribed manner the correction or amendment made in the application.

21. Opposition to registration.—1 [(1) Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee

as may be prescribed, to the Registrar, of opposition to the registration.]

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counterstatement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceedings before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

22. Correction and amendment.—The Registrar may, on such terms as he thinks just, at any time, whether before or after acceptance of an application for registration under section 18, permit the correction of any error in or in connection with the application or permit an amendment of the application:

Provided that if an amendment is made to a single application referred to in sub-section (2) of section 18 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided."

80. As an effect of registration, suffice it to note that the provisions contained in Chapter IV provides for the rights conferred by registration and the effect of a registered trademark for claiming infringement etc. Other chapters contain specific provisions of registration of various trademarks and the cancellation or variation etc. and the claim for infringement. Section 127 of the TM Act 1999 providing for the powers of the Registrar of Trademarks reads as under:-

"127. Powers of Registrar.—In all proceedings under this Act before the Registrar,—

(a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Registrar may, subject to any rules made in this behalf under section 157, make such orders as to costs as he considers reasonable, and any such

order shall be executable as a decree of a civil court:

Provided that the Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or provision of services or to authorise the use of the mark;

81. Sections 128 to 132 providing for the manner in which the proceedings can be conducted by the Registrar Trademarks are also relevant to be noted hereinunder :-

"128. Exercise of discretionary power by Registrar.—Subject to the provisions of section 131, the Registrar shall not exercise any discretionary or other power vested to him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

129. Evidence before Registrar.—In any proceeding under this Act before the Registrar, evidence shall be given by affidavit: Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

130. Death of party to a proceeding.—If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the

surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

131. Extension of time.—(1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in this Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

132. Abandonment.—Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act or any Act relating to trade marks in force prior to the commencement of this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice."

82. The Trademark Rules 2017 framed by the Central Government in exercise of powers under sub-section (4) of Section 157 of the TM Act, set out extensive procedure for making of the application and registration of the trademarks application. Rule 33 provides as to how the Registrar shall cause the examination of the application for registration of trade mark and that it may

require any evidence of use of distinctiveness of any other matter to be furnished by the applicant. In case the response to the examination report is not satisfactory, or where the applicant has requested for hearing, the Registrar shall have to provide an opportunity of hearing to the applicant.

83. Rule 39 provides for advertisement of every application for registration of trademark in journal, as per the procedure therein how notice on opposition therein, counter statement and evidence in support of opposition and in support of application can be filed.
84. Rules 45, 46, 47, 50 when read in tandem, would show that :-
 - i. Evidence in support of opposition or in support of application are to be filed before the Registrar by way of affidavit and the parties are required to exchange their evidence.
 - ii. No further evidence can be filed by either side, in any proceedings before the Registrar, but may grant leave to either of the parties to file/lead any evidence at any time, if he thinks fit, upon such terms as to costs or otherwise.
 - iii. After closure of evidence, the Registrar shall have to give notice to the parties of the first date of hearing and conduct the proceedings in a way that not too many adjournments would be granted to any of the

parties.

85. Rules 33, 45 to 50, contained in Chapter II pertaining to procedure for registration of Trademark application under the Trade Marks Rules 2017, are also relevant to be extracted hereinunder :-

"33. Examination, Objection to acceptance, hearing.

(1)The Registrar shall cause the application to be examined as per provisions of the Act, wherein a search shall also be conducted amongst the earlier trademarks, registered or applied for registration, for the purpose of ascertaining whether there are on record in respect of the same goods or services or similar goods or services any trademark identical with or deceptively similar to the trademark applied for. The Registrar may cause the re-examination of the application including re-search of earlier trademarks at any time before the acceptance of the application but shall not be bound to do so.

(2)If, on consideration of the application for registration of a trademark and any evidence of use or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar has any objection to the acceptance of the application or proposes to accept it subject to such conditions, amendments, modifications or limitations as he may think fit to impose under subsection (4) of section 18, the Registrar shall communicate such objection or proposal in writing to the applicant in the form of an examination report.

(3)If, on consideration of the application for registration of a trademark and any evidence of use

or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar accepts the application for registration absolutely, he shall communicate such acceptance to the applicant and cause the application to be advertised as accepted under subsection (1) of section 20.

(4)If, within one month from the date of receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.

(5)In case the response to the examination report is received within the aforesaid time, the same shall be duly considered and if the Registrar accepts the application for registration, he shall communicate such acceptance to the applicant and cause the application to be advertised as accepted under subsection (1) of section 20.

(6)If the response to the examination report is not satisfactory or where the applicant has requested for hearing, the registrar shall provide an opportunity of hearing to the applicant and the same shall be conducted as per rule 115.

(7)In case the applicant fails to appear at the scheduled date of hearing and no reply to the office objection has been submitted by the applicant, the Registrar may treat the application as abandoned.

(8)Where the applicant has submitted his reply to the examination report within the aforesaid period or has appeared in the hearing and made his submissions, the Registrar shall pass an appropriate order."

"45. Evidence in support of opposition.

(1)Within two months from service of a copy of the counterstatement, the opponent shall either leave with the Registrar, such evidence by way of

affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall deliver to the applicant copies of any evidence including exhibits, if any, that he leaves with the Registrar under this sub-rule and intimate the Registrar in writing of such delivery. (2) If an opponent takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his opposition."

"50. Hearing and decision.

(1) The Registrar, after the closure of the evidence, shall give notice to the parties of the first date of hearing. The date of hearing shall be for a date at least one month after the date of the first notice.

(2) A party to a proceeding may make a request for adjournment of the hearing with reasonable cause in Form TM-M accompanied by the prescribed fee, at least three days before the date of hearing and the Registrar, if he thinks fit to do so, and upon such terms as he may direct, may adjourn the hearing and intimate the parties accordingly: Provided that no party shall be given more than two adjournments and each adjournment shall not be for more than thirty days.

(3) If the applicant is not present at the adjourned date of hearing and at the time mentioned in the notice, the application may be treated as abandoned.

(4) If the opponent is not present at the adjourned date of hearing and at time mentioned in the notice, the opposition may be dismissed for want of prosecution and the application may proceed to registration subject to section 19.

(5) The Registrar shall consider written arguments if submitted by a party to the proceeding.

(6)The decision of the Registrar shall be communicated to the parties in writing at the address given for service."

86. A bare reading of the abovenoted provisions indicate that the Registrar of Trademarks has been conferred with :-

- (i) The powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of the witness;
- (ii) Impose cost as he considers reasonable subject by making such order, which shall be executable as a decree of a civil court.
- (iii) Review his own decision on an application made in the prescribed manner.
- (iv) In the proceedings before the Registrar, evidence shall be given on affidavit. However, if he thinks fit, oral evidence may be adduced in lieu of or in addition to such evidence given by affidavit.

87. In light of the above noted powers of the Registrar conferred under the TMM Act of 1990 and the Rules made thereunder, the next step would be to examine as to what constitutes "trappings of a court".

88. Gajendragadkar CJ in **Associated Cement Companies Ltd. v. P.N. Sharma [1964 SCC OnLine SC 62]**, the Constitution Bench has answered the question as to whether the State of Punjab exercising its appellate jurisdiction under Rule 6(6) of the Punjab Welfare Officers Recruitment and Condition of Service Rules, 1952 is a tribunal within the meaning of Article 136(1) of the Constitution. Considering what would be the basic and fundamental feature common to both the courts and the tribunal, it was observed in paragraph 9 as under:-

“9. Tribunals which fall within the purview of Article 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic; both the courts and the tribunals are “constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions”, (vide *Durga Shankar Mehta v. Thakur Raghuraj Singh* [(1955) 1 SCR 267 at p. 272]). They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions

and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State."

89. It was further noted therein that in **Indo-China Steam Navigation Co. Ltd. v. Additional Collector of Customs, [(1964) 34 Comp Cas 435 :1964 SCC Online SC 42]**, the status of the Central Board of Revenue exercising its appellate power under Sea Customs Act, 1878 and that of the Central Government exercising its power under Section 191 came to be examined. The Apex Court has referred to the test of trappings of a Court which may assist to determine whether the proceedings before the authority in question are judicial or not, besides the basic test whether the authority in question had been constituted by the State and had been given a part of the State's inherent judicial powers. It was, thus, observed in paragraphs '25 and 26' as under :-

"25. It would thus be seen that in dealing with the

question as to whether Respondent 2, while it exercises its appellate power under Rule 6(6), is a tribunal under Article 136(1), we must enquire whether Respondent 2 has been clothed with the State's inherent judicial power to deal with disputes between parties and determine them on the merits fairly and objectively. That is the test which has been consistently applied by this Court in considering the question about the status of any body or authority as a tribunal under Article 136(1). Before we proceed to apply this test to Respondent 2's status under Rule 6(6), we think it is necessary to advert to one aspect of the matter which sometimes creates some confusion.

26. We have referred to the three essential attributes of a sovereign State and indicated that one of these attributes is the legislative power and legislative function of the State, and we have also seen that in determining the status of an authority dealing with disputes, we have to enquire whether the power conferred on the said authority or body can be said to be judicial power conferred on it by the State by means of a statute or statutory rule. The use of the expression "judicial power" in this context proceeds on the well-recognised concept of political science that along with legislative and executive powers, judicial power vests in a sovereign State. In countries where rigid separation of powers has been effected by written Constitutions, the position is very different. Take, for instance, the Australian Constitution. Section 71 of the Commonwealth of Australia Constitution Act (63 & 64 Vict. Chapter 12) provides that the judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as Parliament prescribes. It is clear that the scheme of Sections 71 to 80 which form part of Chapter III of the said Constitution, is that the judicial power of the State can be conferred

only on courts recognised by the provisions of the said Chapter. In other words, it is not competent to the legislature in Australia to confer judicial power properly so-called on any body or authority other than or apart from the courts recognised by Chapter III and so, the use of the expression “judicial power” or its conferment in regard to tribunals which are not courts properly so-called, would under the Australian Constitution be wholly inappropriate. If any tribunals other than courts are established and power is given to them to deal with and decide special disputes between the parties, the power which such tribunals would exercise cannot be described as judicial power, but would have to be called quasi-judicial power.”

90. While explaining as to what really constitutes “trapping of Court”, it was further observed in paragraph ‘33’ as under :-

“33. The question which we have to decide in the present appeal is whether the State Government is a tribunal when it exercises its authority under Rule 6(5) or Rule 6(6). No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in courts and which are intended to help the court in reaching its decisions. The requirements of procedure which is followed in courts and the possession of subsidiary powers which are given to courts to try the cases before them, are described as trappings of the courts, and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears appeals under Rule 6(5) and Rule 6(6). But as we have already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the

said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by Rule 6(5) and Rule 6(6), we feel no hesitation in holding that it is a tribunal within the meaning of Article 136(1)."

91. It was, thus, emphasized by the Constitution bench that the main and basic test is whether the adjudicating power which a particular authority is empowered to exercise has been conferred on by a statute and can be described as a part of the State's inherent power exercised in discharge of its judicial function. The consideration about the presence of all or some of the trappings of a court is really not decisive. However, the presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings is the judicial power of the state or not.

92. In a later judgment in **Kihoto Hollohan v. Zachillhu [1992 Supp (2) SCC 651]**, the Apex Court noted that in paragraph '98' that :-

"98. But then is the Speaker or the Chairman acting under Paragraph 6(1) a Tribunal? "All tribunals are not courts, though all courts are tribunals". The word "courts" is used to designate those tribunals which are set up in an organised State for the Administration of Justice. By Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the courts are there to restore the *vinculum juris*, which is disturbed. (See *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunhunwala* [(1962) 2 SCR 339 : AIR 1961 SC 1669 : (1961) 31 Comp Cas 387]). In that case Hidayatullah, J. said: (SCR p. 362)

"... By 'courts' is meant courts of civil judicature and by 'tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that the courts have 'an air of detachment'. But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so

well and with such detachment as to make this test insufficient.”

93. In **State of Gujarat v. Gujarat Revenue Tribunal Bar Assn., [(2012) 10 SCC 353]**, the Apex Court elaborated that tribunals have primarily been constituted to deal with cases under special laws and hence, provide for specialised adjudication alongside the Courts. Therefore, a particular Act/set of rules will determine whether the functions of a particular tribunal are akin to those of the Courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called a quasi-judicial authority, i.e. a situation where, (a) a statutory authority is empowered under a statute to do any act; (b) the order of the statutory authority would adversely affect the subject; and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject; and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. It was held that an authority may be described as a quasi-judicial authority when it possesses certain attributes or “trappings of a court”, but not all. In case certain powers under CPC or CrPC have been conferred upon an authority, but it has not been entrusted with the judicial powers of State, it cannot be held to be a Court.

94. It was further observed that a tribunal may not necessarily be a Court, inspite of the fact that it may be presided over by a judicial officer, or other qualified persons may also possibly be appointed to perform such duty. One of the tests to determine whether a tribunal is a Court or not, is to check whether the High Court has revisional jurisdiction so far as the judgments and orders passed by the tribunal are concerned. While drawing distinction between a “Court” and a “Tribunal”, it was noted in paragraphs “19 and 20” as under :-

“19. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala* [AIR 1961 SC 1669] Hidayatullah, J. (as His Lordship then was) made a distinction between a “court” and a “tribunal” as is explained hereunder : (AIR p. 1680, para 32)

“32. ... These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, *but they are not part of the ordinary courts of civil judicature*. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. *They are very similar to courts, but are not courts*. When the Constitution speaks of ‘courts’ in Article 136, 227 or 228 or in Articles 233 to 237 or in the Lists, it contemplates courts of civil judicature but not tribunals other than such courts. This is the reason for using both the expressions in Articles 136 and 227.

By ‘courts’ is meant courts of civil judicature and by ‘tribunals’, those bodies of men *who are appointed to decide controversies arising under certain special laws*. Among the powers of the State is included the power to decide such controversies.

This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature.”

(emphasis added)

20. To explain the distinction between a court and tribunal, His Lordship further relied upon the judgment in *Shell Co. of Australia Ltd. v. Federal Commr. of Taxation* [1931 AC 275 : 1930 All ER Rep 671 (PC)] wherein it has been observed as under : (AC p. 297) “In that connection it may be useful to enumerate some negative propositions on this subject : (1) A tribunal is not necessarily a court in this strict sense because it gives a final decision. (2) Nor because it hears witnesses on oath. (3) Nor because two or more contending parties appear before it between whom it has to decide. (4) Nor because it gives decisions which affect the rights of subjects. (5) Nor because there is an appeal to a court. (6) Nor because it is a body to which a matter is referred by another body.”

95. All the above noted judgements are considered by the Division Bench (Letters Patent Bench) of the Calcutta High Court in **Glorious Investment Ltd. (supra)** in paragraphs '23 to 25' therein.
96. With the aid of the decision of **Privy Council in Shell Co. of Australia Ltd. v. Federal Commr. of Taxation**, it was further noted by the Calcutta High Court as to what defines judicial power and that Their **Lordships** in *Shell Co.*, enumerated certain negative propositions in relation to the subject; (1) A tribunal is not necessarily a Court in this strict sense because it gives a final

decision; (2) Nor because it hears witnesses on oath; (3) Nor because two or more contending parties appear before it between whom it has to decide; (4) Nor because it gives decisions which affect the rights of subjects. (5) Nor because there is an appeal to a Court. (6) Nor because it is a body to which a matter is referred by another body.

97. In **Bharat Bank Ltd. v. Employees [1950 SCC 470]** the test of the judicial Tribunal has been laid down as under :-

“(1) The presentation (not necessarily orally) of their case by the parties to the dispute;

(2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence;

(3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and

(4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.”

98. Thus, upon a holistic reading of various provisions of the 1999 Act and the Rules made thereunder, the Calcutta High Court in **Glorious Investment Limited (supra)** has observed in paragraph '28-30' as under:-

"28. Thus the Registrar has all powers including power to review its decision and to impose costs that a Civil Court has for the purposes mentioned in Section 127 of the 1999 Act. The order as to costs passed by the Registrar has been made executable as a decree of Civil Court.

29. A journey through the provisions of Chapter III of the 1999 Act would reveal that the process for registration of a trademark is initiated by an application made in terms of Section 18 by a *"person claiming to be the proprietor of a trade mark or proposed to be used by him"*. Section 20 of the 1999 Act mandates advertisement of the application and Section 21 thereof provides for filing of opposition/counter-statement by any person who seeks to oppose the application for registration. Section 22 of the 1999 Act confers power on the Registrar to allow amendment of the application for registration. The Registrar is to ultimately take a decision on the application filed before it by either accepting the application or rejecting the same upon considering the opposition thereto, if any. The Trademarks Rules, 2017 (hereafter "the Rules") have been framed by the government in exercise of its powers under Section 157 of the 1999 Act, which provides a detailed procedure for examination of an application for registration, hearing of the objections thereto and rendering a decision by the Registrar prior to its acceptance.

30. A holistic reading of the various provisions of the 1999 Act and the Rules framed thereunder hardly leave any room for doubt that the Registrar has almost all the trappings of a Court. We are

conscious that there is no provision in the 1999 Act whereby the proceedings before the Registrar has been held to be judicial proceedings within the meaning of the Code of Criminal Procedure or Penal Code, 1860 as was there in respect of the erstwhile Intellectual Property Law Appellate Board under the pre-amendment 1999 Act or the CLB under the 1956 Act but then that by itself would not detract us from the conclusion that the Registrar has all the trappings of a Civil Court for the purpose of deciding as to whether a mark should be registered in favour of a person or not. A decision to register makes the person concerned the exclusive owner of the registered trademark in terms of Section 28 of the 1999 Act. Such decision is taken on the basis of the evidence adduced by the person concerned and upon considering the opposition to the application along with the evidence in support of the opposition. The Registrar thus has a duty to act judicially and fairly. Even if an opposition is not filed, the Registrar has a duty to objectively scrutinise the application, examine the facts in the light of the evidence adduced in order to determine if the trademark meets the requirements for registration under the 1999 Act and then take a decision. The same would have been a case for a Civil Court as well where the defendant had not filed its written statement and the case was proceeding *ex-parte*. The Court would also in such a case be required to pass a judgment in favour of the plaintiff only upon the plaintiff proving his case. The decision taken by the Registrar to either accept the request for registration or to reject the same directly impacts and determines the applicant's legal rights and liabilities and in a case of an opposition the rights and liabilities of both the parties. This is an essential characteristic of a judicial function."

99. Having gone through the scheme of the Trade Marks Act, 1999 and the Trademark Rules, 2017 made thereunder, considering the nature of the powers

conferred upon the Registrar of Trademarks to make inquiries on an application for registration or opposition thereto, we found ourselves in complete agreement with the opinion drawn by the Calcutta High Court in **Glorious Investments (supra)** that the Registrar of Trademarks while exercising the powers and functions under the TM Act, 1999 acts as a tribunal, having “trappings of a Court”. Further, keeping in mind the tests laid down by Gajendragadkar CJ in **Associated Cement Companies Limited (supra)**, which are the main and basic tests, we also reach at an irresistible conclusion that the adjudicating power conferred upon the Registrar of Trade Marks by the Central statute (the Trade Marks Act, 1999), can be described as part of the State’s inherent power exercised in discharging its judicial function and that the possession of the subsidiary powers which are given to the Civil courts to try cases before them, makes the Registrar, a statutory authority, “a Tribunal having trappings of the courts”.

100. Having regard to the nature of the powers conferred on the Registrar of Trademarks, there is no room for doubt that the main and basic test of the power exercised by the authority being the judicial power of the State and the assistive test of the presence of “trappings of a court” in discharge of such judicial power stands satisfied in the present case in view of the scheme of the Trade Marks Act, 1999 and the Rules, 2017 made thereunder. The first question is, thus, answered in the

affirmative.

101. Having answered the first question, we may now move to the second issue as to the applicability of Section 100A of the Code of Civil Procedure ousting Letters Patent jurisdiction in a matter where the single Judge decides statutory appeal against the order of a tribunal (the Registrar of Trademarks in the present case). To hold that any avenue of Letters Patent Appeal against the order passed under Section 91 of the 1999 Act is ousted for the Registrar being a Tribunal having “trappings of a Court”, the Division Bench of the Calcutta High Court in **Glorious Investment Limited (supra)** relied upon the decision of Apex Court in **Kamal Kumar Dutta (supra)**.

102. The Apex Court in **Kamal Kumar Dutta (supra)**, while dealing with the challenge to the order of the Company judge has answered the preliminary objection that the appellants therein had an alternative remedy of approaching the Division Bench of the Calcutta High Court under Clause 15 of the Letters Patent and hence the Apex Court may not entertain the appeal.

103. It was argued, in rebuttal to the preliminary objection, that in view of the latest amendment in the Code of Civil Procedure, Letters Patent or intra court appeal will not lie when the learned Single Judge has exercised appellate jurisdiction. It was urged therein that this amendment seems to have been brought about on the

recommendations of the Malimath Committee report that right to appeal should be curtailed and only one appellate forum should be available.

104. Further, dealing with the argument that the appeal is a vested right, it was observed therein that there can be no quarrel with the said general proposition of law but such a right can be taken away by a subsequent amendment either expressly or by necessary intendment. The Parliament while amending Section 100-A of the Code of Civil Procedure by Amending Act 22 of 2002 w.e.f. 1.7.2002, took away the Letters Patent power of the High Court against an order of the learned Single Judge in the matter of appeal to the Division Bench.
105. Therefore, where appeal has been decided from an original order by a Single Judge, no further (second) appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. It was held that the order passed by the Company Law Board was challenged in an appeal before the High Court provided under Section 10-F of the Companies Act, 1956, and that appeal is an appeal from the original order, in that case, no further Letters Patent appeal shall lie to the Division Bench of the High Court.
106. Referring to the Constitution Bench judgment in **P.S. Sathappan versus Andhra Bank Limited [(2004) 11 SCC 672]**, it was noted that by the Amendment Act of

2002, a specific exclusion is provided as the legislature knew that in absence of such provision, a Letters Patent appeal would not be barred.

107. The legislature was aware that it had incorporated the savings clause in Section 104(1) and incorporated Section 4 CPC. Thus, now a specific exclusion was provided.

108. Considering **Subal Paul (supra)**, it was noted in paragraph '27' in **Kamal Kumar Dutta (Supra)** as under :-

"27. Similarly, in *Subal Paul v. Malina Paul* [(2003) 10 SCC 361] their Lordships observed as follows: (SCC p. 368, para 20)

"Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100-A of the Code of Civil Procedure."

109. The **conclusion** in paragraph '28' are noted herein under :-

"28. In *Gandla Pannala Bhulaxmi v. Managing Director, A.P. SRTC* [AIR 2003 AP 458 (FB)] the Full Bench of the Andhra Pradesh High Court has taken a similar view in the matter. Same is the view taken by the Full Bench of the Kerala High Court in *Kesava Pillai Sreedharan Pillai v. State of Kerala* [AIR 2004 Ker 111 (FB)] . Therefore, in this view of the matter, we are of the opinion that the preliminary objection raised by Mr Nariman cannot be sustained and the same is overruled."

110. It was observed in **Kamal Kumar Dutta (Supra)** that

intendment of the Legislature / Parliament to take away the right of Letters Patent appeal is evident from the provisions of Section 100-A and the reasons for amendment in the CPC. The power of the High Court in exercising the Letters Patent in a matter where a single judge has decided the appeal from the original order has been taken away. In the context of the said matter where the learned Single Judge has exercised powers under the Companies Act, 1956 against the order of the Company Law Board, it was held that the Company Law Board had exercised quasi-judicial power as original authority. It may not be a Court but it has all the trappings of a court. The Company Law Board exercised its original jurisdiction under Section 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and, therefore, no further appeal could be filed.

111. This test of "trappings of a court" applied in **Kamal Kumar Dutta (Supra)** has been further applied by the Calcutta High Court in **Glorious Investment Limited (Supra)** to observe in Paragraphs '17 and 18' as under :-

"17. The conclusion reached by the Division Bench of Delhi High Court that the bar contained in Section 100A of the Code would apply only to an appeal carried against an order of a Court is quite apt. However, when the Hon'ble Supreme Court has in the case of *Kamal Kumar Dutta* (supra) extended the prohibition contained in the said provision to an order passed by the Company Law Board also, on the ground that the same has "all trappings of a Court" we would fail in our duty if

we stop short of examining as to whether or not the Registrar has all the trappings of a Court. The Division Bench of the Delhi High Court was *"doubtful whether the "trappings of a court" test as generally formulated would have any application."* The later observation of the Delhi High Court in the paragraph extracted above that *"However, even if we were to proceed on the basis that such a test could be justifiably invoked for the purposes of Section 100A, the Registrar of Trademarks would not qualify the standards as enunciated."* - is a conclusion which was reached on the basis that there was no deeming provision in the 1999 Act whereunder the Registrar could be treated to be a Court. We therefore need to conduct the test.

18. Before proceeding further, it needs to be pointed out that the earlier judgment in the case of *National Sewing Thread Co. Ltd.* (supra) which was decided by a larger Bench (i.e. three Judge Bench) of the Hon'ble Supreme Court has not been considered in *Kamal Kumar Dutta* (supra). This would have denuded *Kamal Kumar Dutta* (supra) of its authority as a precedent on the present issue but since the same has been decided on the basis of Section 100A of the Code which was not in existence when *National Sewing Thread Co. Ltd.* (supra) was decided, therefore, the precedential flavour of *Kamal Kumar Dutta* (supra) remains intact."

112. It was rightly noted therein that at the time when **National Sewing Thread Company Limited [Supra]** was delivered, Section 100A was not there in the Code. With the insertion of the said provision, as held in **Kamal Kumar Dutta (Supra)**, the right of intra-court appeal by virtue of Section 100A has been taken away,

where the order of the learned Single Judge is directed against an original order of the tribunal having trappings of a court or the Court.

113. It was, thus, concluded that heavy reliance placed by learned counsel for the appellant therein over the decision of the Apex Court in **National Sewing Thread Company Limited (Supra)** is of no help, and to be distinguished in view of the later decision in **Kamal Kumar Dutta (Supra)**, post-amendment 2002 in the Code of Civil Procedure.

114. Coming to the decision of the Division Bench of Delhi High Court in **Promoshirt SM SA (Supra)**, relied by the learned counsel for the appellant herein we may note that while answering the question whether Section 100A of the Code, while prescribing that no further appeal would lie from an original or appellate decree or order preferred by a learned Judge of a High Court would also extend to appeals that may be preferred in terms of Letters Patent against the judgement rendered by a Single Bench of the High Court in terms of Section 91 of the TM Act' 1999, the Delhi High Court has not examined the issue as to whether or not, the Registrar of the Trademarks exercising powers under the TM Act' 1999 can be said to be a tribunal having "trappings of the Court".

115. The Division Bench of the Delhi High Court has simply proceeded on the premise that the Registrar of

trademarks is not a Civil court even though some of the powers that are otherwise available with a civil court may have been placed in its hand and be exercised by it. It is simply held therein that the powers conferred on the registrar does not qualify the test of 'trappings of the court' in light of the decisions of the Apex Court in **Khoday Distilleries Ltd. v. Scotch Whisky Assn. [(2008) 10 SCC 723]** and the Bombay High Court in the **Anglo French Drug C. (Eastern) Private Ltd. vs. R.D. Tinaikar [1957 SCC Online Bom 165]** and since Section 91 of the TM Act 1999 does not prescribe the appellate remedy to be governed by the provisions of the Code of Civil Procedure, the Letters Patent Appeal against an order passed by a Single Judge while exercising the Section 91, would not be barred.

116. The Delhi High Court in **Promoshirt SM SA (supra)**, while making the abovenoted observations, has answered the issue of applicability of Section 100A of the Code of Civil Procedure with the idea that the exclusion therein would only apply to an appeal against the judgment of a Single Judge exercising appellate power provided under the Code of Civil Procedure or where the special statute subjects the appeal remedy to follow the rules applicable to appeals embodied in the Code, i.e. where the appeal is made subject to the rules incorporated in Code of Civil Procedure.

117. The Delhi High Court, proceeded on the premise that the tribunal is not a civil court, and in view of the decision of

the Apex Court in **Khoday Distilleries Ltd. (supra)** and Bombay High Court in **Anglo French Drug C. (Eastern) Private Ltd.(supra)**, the Registrar, Trade Marks cannot be regarded as a civil court merely because it has been given powers of a civil court for certain purposes.

118. There is absolutely no discussion or consideration of the decision of the Apex Court in **Kamal Kumar Dutta (supra)** by the Delhi High Court in **Promoshirt SM SA (supra)** where the Apex Court has held that Company law board having “trappings of the Court”, its order when subjected to challenge before the learned Single Judge under the statutory powers conferred under the Companies Act, 1996, Letters Patent Appeal in view of the exclusion by Section 100A of the Code of Civil Procedure, would not be maintainable.
119. The Division bench of the Delhi High Court while making a distinction between two sets of statutes where the appeal remedy is to follow the rules applicable to appeals embodied in the Court and where the powers of the Civil Court has been conferred to a limited extent by the borrowing from the Code of Civil Procedure has ignored an important aspect of the matter that tribunals which have been created under the special statutes are in substitute to the Civil Court when they exercise special powers under the statute in exercise of judicial powers of the State.

120. It has ignored that when the procedures under CPC are borrowed conferring powers upon the tribunal for adjudication of the dispute, it would mean that such tribunals have all the trappings of the Court, and be treated as akin to the Civil Court.
121. The Apex Court in **Radhey Shyam (supra)** held that the extraordinary supervisory jurisdiction of the High Court in Article 227 of the Constitution of India would be available against the order of the Civil Court and tribunals having trappings of the Court, subordinate to the High Court. And it is for this reason, the Apex Court in **Umaji Keshao Meshram (supra)**, has held that Letters Patent appeal in Clause 15 of the Letters Patent is expressly barred against the decision of the Single Bench of the High Court in Article 227 of the Constitution of India.
122. At this stage, we are also required to consider the language employed in Clause 15 of the Letters Patent, which reads as under:-

“15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.- And we do further ordain that an appeal shall lie to the said High Court of Judicature at [Madras], [Bombay], Fort William in Bengal from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of a revisional jurisdiction, and not being a sentence or order

passed or made in exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, [on or after the first day of February, 1929] in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided."

123. From the heading of Clause 15, itself it appears that it provides for appeal from the court of original jurisdiction to the High Court in its appellate jurisdiction, meaning thereby from the judgment and order of one judge of the High Court in exercise of its original jurisdiction to a Division Bench;

(a) not being a judgement passed in exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court, subject to the superintendence of the said High Court,

(b) and not being an order made in the exercise of

a revisional jurisdiction,

(c) and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction.

124. The first clause of exclusion, "not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court, subject to the superintendence of the said High Court," is relevant for our consideration in the facts and circumstances of the present case.

125. A careful reading of the above indicates that Clause 15 excludes for a Letters Patent Appeal against a judgment of a Single Bench, passed in exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court, which is subject to superintendence of the High Court. Meaning thereby, the third appeal before the Division Bench under Clause 15 of the Letters Patent, would not be maintainable.

126. Further, the judgment or order passed by the High Court in exercise of its appellate jurisdiction under Section 91 of the Trade Marks Act, 1999, being an order of a Single Judge against the order of the tribunal having trappings of the court, will not qualify Clause 15 of Letters Patent to maintain an appeal thereunder before the Division Bench,

in view of the exclusion by virtue of Section 100A of the Code of Civil Procedure.

127. There is one more aspect of the matter. The TM Act' 1999 has been brought to amend the law relating to trade marks, repealing Trade and Merchandise Marks Act, 1958. Section 109 of the TMM Act' 1958 provided for two stages of appeal before the High Court by virtue of sub-section (4) and sub-section (5) therein.
128. Section 91 of the TM' Act, 1999, as was originally enacted in the year 1999 provided for appeal under Section 91 before an Appellate Board. The 'Appellate Board' has been substituted by Tribunals Reforms Act, 2021 (33 of 2021) by the 'High Court' with effect from 04.04.2021.
129. On a comparison of Section 109 of the erstwhile TMM Act, 1958 and Section 91 of TM Act, 1999 as amended by Act 33 of 2021, it is clear that w.e.f. 04.04.2021, the statutory appeal under Section 91 lies with the High Court. While Section 109 of the erstwhile TMM Act, 1958 provided for two stages of appeal, i.e. a further appeal to a bench of the High Court against the appellate order of a single judge of the High Court, Section 91 of TM Act' 1999 provides for only one appeal. The forum of second appeal, thus, has been taken away by the legislature.
130. In light of the above, we find ourselves in complete agreement with the opinion of the Calcutta High Court in **Glorious Investment Limited (Supra)**, when it says that

deletion of a provision from a statute is to be given due weightage in probing the legislative intent. The question posed by it was “why should a similar consideration not be factored in while considering a successor legislation given the fact that a specific provision for appeal which was there in the predecessor Act is not there in the successor Act?”

131. While answering the same, it was noted that while the Tribunals Reforms Act, 2021 was enacted bringing several amendments in the 1999 Act and one change was made of the appellate forum under Section 91 from the ‘Appellate Board’ to the High Court, notably apart from the change of the forum of appeal, the other portion of Section 91 was left untouched. It was held that it is settled law that no appeal can be preferred without there being any provision therefor. It is equally settled that a specific statute may exclude a general appellate provision both expressly as well as by implication. Here, the exclusion is express by application of Section 100A of CPC and is tacitly implied by the exclusion of the second appellate provision in the present statute which was there in the predecessor statute.

132. The Calcutta High Court, thus, has proceeded on the principle that the special enactment of Trade Marks Act, 1999 was brought in a departure from the erstwhile TMM Act, 1958, curtailing one more level of appeal to the High Court. The exclusion of one level of appeal in the successor Act, i.e., 1999 Act makes clear the intention of the legislature not to provide a forum for second appeal against the appellate order of a single bench of the High Court.

133. This is one aspect which, in our opinion, is to be factored in while dealing with the arguments of the appellant of maintainability of second level of appeal in the form of Letters Patent Appeal.

134. With the above reasonings, the Calcutta High Court disagreed with the view taken by the Delhi High Court in the case of **Promoshirt SM SA (supra)**.

135. In view of the above discussion, the legal position in the matter of maintainability of Letters Patent Appeal against the order of learned Single Judge under Section 91 of the Trade Marks Act, 1999 can be culled out as under:-

- a) The Registrar of Trade Marks while exercising powers under the Trade Marks Act in the matter of registration of trademarks under the provisions contained in Chapter III, exercises quasi-judicial power, and in view of Sections 127, 129 and the rules prescribing procedure for exercise of power framed under the Act, namely, Trade Marks Rules, 2017, the Registrar acts as a tribunal, having 'trappings of the court', though it may not be a court of civil judicature *stricto sensu*.
- b) The language of Section 100A CPC does not suggest that the exclusion of the right of appeal under the letters patent is confined only to the matters arising under the Code of Civil Procedure and not under any statutory enactments.

- c) Under Clause 15 of Letters Patent, the Letters Patent Appeal is maintainable before a Division Bench against the judgment and order of the High Court in exercise of its original jurisdiction, not being a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made by a court, subject to the superintendence of the High Court.
- d) The exercise of power by a Single Bench of the High Court under Section 91 of the Trade Marks Act, 1999 is in exercise of appellate jurisdiction and not in original jurisdiction, for the Registrar of Trade Marks being a tribunal having trappings of the Court, and hence, Letters Patent Appeal under clause 15 of the letters patent would not be maintainable, in view of exclusion under Section 100A of the CPC.
- e) Section 100A of the Code of Civil Procedure specifically excludes Letters Patent Appeal for any High Court, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, with the words, “no further appeal shall lie from the judgment and decree of such Single Judge.” In view of the specific exclusion of the second appeal in the shape of a Letters Patent Appeal before the Division Bench against the order of the Single Judge passed in its appellate jurisdiction, the Letters Patent Appeal under Clause 15 of the Letters Patent shall specifically stand excluded from

an order in appeal under Section 91 of TM Act' 1999 passed by a Single Bench of the High Court.

- f) The fact that the legislature had consciously avoided a forum for second appeal while creating an appellate board for hearing appeals under the 1999 Act, and subsequently, Tribunals Reforms Act, 2021, though brought several amendments in the 1999 Act including change of appellate forum, under Section 91 from the 'Appellate Board' to the High Court, but still the second level of appeal before the High Court as was available in the erstwhile TMM Act 1958, was not provided. The legislative intent for exclusion of one more level of appeal under the special enactment (TM Act 1999) is a relevant factor to be taken into consideration for avoiding inclusion of Letters Patent Appeal under the general appellate provisions of the Letters Patent.

136. We are, thus, in complete agreement with the law laid down by the Division Bench of Calcutta High Court in **Glorious Investment (supra)** that the clear legislative intent in the special law cannot be allowed to be overridden by a long drawn interpretative process and by reading the same to be making room for Letters Patent Appeals. The deletion of the second appellate provision from a statute (TMM Act, 1958) is to be given due weightage in probing the legislative intent with the exclusion of the second appellate provision in the present statute (TM Act, 1999) which was there in the predecessor statute, and the express

exclusion by application of Section 100A CPC, it is held that further appeal under Clause 15 of the Letters Patent as an intra-court appeal shall not be maintainable against the order of a Single Bench passed in appellate proceedings under Section 91 of the 1999 Act.

137. For the above reasoning, we are also in full agreement with the distinction made by the Calcutta High Court to the Division Bench judgment of Delhi High Court in **Promoshirt SM SA (supra)**.

138. Lastly, with regard to another decision of the Delhi High Court in **Resilient Innovations Pvt. Ltd. (supra)** relied by the learned counsel, suffice it to say that the said decision is distinguishable in the facts and circumstances of the present case, inasmuch as, the same arises out of a case under Section 57 of the 1999 Act, which contemplates an application for rectification filed before the Registrar or High Court. The proceedings under Section 57 of the Trade Marks Act, 1999, are conducted by the High Court as original proceedings and not as appellate proceedings. The same would, therefore, be outside the purview of the provisions of Section 100A of the Code and Clause 15 of the Letters Patent, and hence, a Letters Patent Appeal, there against the Single bench judgment or order would be maintainable before the Division Bench.

139. With the above, the preliminary objections as to the maintainability of the instant Letters Patent Appeal under Clause 15 of the Letters Patent against the order of the

learned Single Judge of the High Court in an appeal under Section 91 of the Trade Marks Act, 1999, are hereby upheld.

140. With the above, the instant Letters Patent Appeals are dismissed as not maintainable. It needs no clarification that we have not entered into the merits of the claims of the appellant, and all rights and contentions of the parties on the merits of the order of the Registrar and the High Court in any further challenge are left open.

141. Dismissed. No order as to costs.

Pending Civil Applications, if any, would not survive and shall stand disposed of accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BIJOY B. PILLAI