

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL MISCELLANEOUS PETITION NO. 479 OF 2022

Rajat Kumar ...Petitioner

Versus

Shivankar Gupta & Anr. ...Respondents

Mr. Yakshay Chheda i/b SSB Legal & Advisory for Petitioners.

None for the Respondents.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 10th MARCH 2026

PRONOUNCED ON : 23rd MARCH, 2026

JUDGMENT


1. The captioned Petition has been filed under the provisions of Section 57 of Trade Marks Act, 1999 (“**Trade Marks Act**”), seeking cancellation of the registration obtained by Respondent No. 1 in respect of the mark “TRACTORJUNCTION” (“**impugned mark**”) in class 35. Respondent No. 2 is the Registrar of Trade Marks who passed the impugned order.
2. The Respondents, though served, have not appeared, as noted in the Order dated 3rd March 2025. The averments in the Petition therefore

remain uncontroverted.

Submissions on behalf of the Petitioner:

3. Mr. Chheda, Learned Counsel appearing on behalf of the Petitioner has assailed the impugned registration essentially on two grounds: **(I)** that the impugned mark has been registered without sufficient cause and is an entry wrongly remaining on the register under Section 57(2) of the Trade Marks Act and **(II)** that Respondent No. 1 had applied for registration of the impugned mark in bad faith, and the same is barred under Section 11(10) and Section 18 of the Trade Marks Act.
4. Mr. Chheda, in support of **(I)** and **(II)** above, made the following submissions.

I. The impugned mark has been registered without sufficient cause and is an entry wrongly remaining on the Register.

5. Mr. Chheda at the outset submitted that the registration of the impugned mark was barred under the provisions of Section 11(3) of the Trade Marks Act since Petitioner No. 1 was the prior adopter and user of the impugned mark and logo “”. He submitted that the

impugned mark was adopted by Petitioner No. 1 in the year 2014 and has been used by Petitioner No. 1 continuously since at least 2016 in respect of goods and services covered under Class 35.

6. Mr. Chheda then submitted that Petitioner No. 1 had significant rights, both statutory and common law, in the impugned mark and that Petitioner No. 1's statutory rights in the impugned mark were evident from the following list of registrations and pending applications, viz.

Application No.	Trade Mark	Class	Date of Application	Status
4473747	Device Mark	9	16.03.2020	Registered
4473749		12	16.03.2020	Accepted and Advertised
4473750		42	16.03.2020	Registered
4355544		35	22.11.2019	Objected

7. Mr. Chheda then, in support of Petitioner No. 1's common law rights in the impugned mark, invited my attention to the following viz.

Sr. No.	Document	Date of document	Annexure
1.	Printout of Petitioner No. 1's Facebook	—	Annexure F

	Page		((@pg. 68 to 70)
2.	Email exchange with website designer for creation of the website of Petitioner No. 1, www.tractorjunction.com and logo	January and March 2016	Annexure G (@pg. 71)
3.	Illustrative invoices, quotations, and purchase orders of Petitioner No. 1	2016 and 2017	Annexure H (@pg. 72 to 80)
4.	Illustrative agreements between Petitioner No. 1 and customers	2016 and 2017	Annexure I (@pg. 81 to 87)
5.	Illustrative invoices showing Petitioner No. 1's sales promotion expenses	2016	Annexure J (@pg. 88 to 92)
6.	Screenshot of Petitioner's interview with AI TV	Interview dated 11 April 2017	Annexure K (@pg. 93)
7.	Web analytics data demonstrating high traffic the website of the Petitioner No. 1	2016 to 2020	Annexure L (@pg. 94 and 95)
8.	Printout from the YouTube page of Petitioner No. 1	shows use of the subject trademark in early 2016	Annexure M (@pg. 96)
9.	Copy of PAN card of Petitioner No. 1	2016	Annexure N (@pg. 97)
10.	Redacted copy of the partnership deed of Petitioner No. 1 dated 25 May, 2016	25 th May, 2016	Annexure B: (@pg. 41 to 47)
11.	Registration certificate issued by the Department for Promotion of Industry	8 th July 2017	Annexure C (@pg. 47)

	and Internal Trade in favour of Petitioner No. 1 firm		
12.	Internet extract of the <i>Whois</i> record of the website of Petitioner No. 1 along with an illustrative screenshot of the website dating back to April 2016	–	Annexure E (Colly.)(@pg. 49 to 67)

He submitted that all of the above showed the prior use by Petitioner No. 1 of the mark “TRACTORJUNCTION”, thus establishing Petitioner No. 1's common law rights in the said mark. He then pointed out that Petitioner No. 1 had, since 30th March 2022, assigned all the aforesaid trade marks and pending applications in favour of Petitioner No. 2 vide a Deed of Assignment.

8. Mr. Chheda then submitted that Respondent No. 1 had filed an application for registration of the impugned mark in October 2018 with a user claim of 10th September 2018, as stated by Respondent No. 1 in Form TM-A. He then submitted that the said Form specifically sets out that “...*(d) The statement as to use of the mark once made shall be final.*” He therefore submitted that the Respondent No. 1 was bound by the user date of 10th September 2018 as stated in the said Form.

9. Mr. Chheda then submitted that, in any event, the user claim made in

the impugned registration was false and fabricated for the following reasons, viz.

i. The investigation report dated 2nd March 2021, prepared by one Mr.

Sameer Fakki, revealed that Respondent No. 1 had never used the impugned mark.

ii. In paragraph 9 of the Reply to the rectification filed by Respondent

No. 1 before the Intellectual Property Appellate Board (“**IPAB**”),

Respondent No. 1 had admitted as follows, viz.

“... The only error which Respondent No. 1 admits and accepts is that erroneously the date of first usage is being written as 05.10.2018, which was mentioned by the attorney i.e. ‘Vakilsearch’ an online service provider for trademark registration hired by the Respondent No. 1 for registration of Trademark. The factual error happened on account of misinterpretation of the receipt issued by Godaddy for registration of domain name TRACTOR JUNCTION.co. Whereas, the said trademark is in usage since the inception of Shreeji Motors, a “Mahindra & Mahindra” tractor agency since 2011, located in Gwalior and Gohad or at least from the date when the evidence of usage is available which is annexed with this reply.”

iii. Respondent No. 1 had not filed any document in support of the

use of the impugned mark since 2011.

iv. The investigation report in paragraphs 4 to 6 also clearly stated that

Respondent No. 1 did not have proof of using the impugned mark.

II. Respondent No. 1 applied for registration of the impugned mark in bad faith, and the registration was thus barred under Section 11(10)¹ and Section 18 of the Trade Marks Act:

10. Mr. Chheda submitted that, as was evident from the above, Respondent No. 1 filed and obtained the impugned registration in bad faith and only in an attempt to usurp and defeat the rights of the Petitioner in respect of the impugned mark.

11. He reiterated that Respondent No. 1 had filed a false affidavit of user before the Trade Marks Registry and had obtained the impugned registration by playing fraud upon the Registry. He thus submitted that the registration of the impugned mark had been granted in violation of the provisions of Section 11(10) and Section 18 of the Trade Marks Act.

12. Mr. Chheda then placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of *S. Syed Mohideen v. P.*

¹ 11 (10) While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—
(i) protect a well-known trade mark against the identical or similar trade marks;
(ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

*Sulochana Bai*² to point out that the rights of a prior user would remain unaffected by subsequent registration. He also placed reliance upon the decision of the Delhi High Court in the case of *Marie Stopes International v. Parivar Seva Sanstha and Another*³ to point out that the Delhi High Court had rectified a trade mark registration under Section 57 of the Trade Marks Act, where it was found that the registration was granted in violation of the provisions of Sections 11(3)(a) and 11(10) of the said Act.

13. Mr. Chheda also pointed out that the Delhi High Court had, in the case of *BPI Sports LLC v. Saurabh Gulati and Anr.*⁴, *inter alia*, held that dishonest adoption of a mark with prior knowledge of another similar mark amounts to bad faith under Section 11(10)(ii) of the Trade Marks Act. He thus submitted that the present Petition deserved to be allowed on these grounds, i.e., (I) and (II).

14. Having heard learned counsel for the Petitioner and having considered

² (2016) 2 SCC 683.

³ 2023 SCC OnLine Del 5845.

⁴ 2023 SCC OnLine Del 2424.

the material upon which reliance has been placed as also the case laws, I find that the Petition deserves to be allowed. I say so for the following reasons:

A. The Petition proceeds entirely on the basis that Respondent No.

1 has acted in bad faith in obtaining the impugned registration and sets out the necessary details and averments in that regard.

Respondent No. 1, though served, has chosen not to appear to defend the Petition, nor has Respondent No. 1 denied the allegations including those of bad faith contained in the Petition.

Thus, the averments in the Petition remain uncontroverted, and in my view, this silence on the part of Respondent No. 1 itself speaks volumes.

B. Additionally, Respondent No. 1 has claimed user of the

impugned mark since 10th September 2018, whereas, the

Petitioner has placed on record, material to support the

Petitioner's claim of prior use of the impugned mark since at

least 2016, in respect of goods and services covered under Class

35 i.e., the same class in which Respondent No. 1 has claimed

user of the impugned mark since the year 2018. Again, there is no denial of this. Petitioner No. 1 has therefore established prior user of the impugned mark and thus would be entitled to the benefit conferred upon a prior user as held by the Hon'ble Supreme Court in the case of *S. Syed Mohideen v. P. Sulochana Bai*.

C. Though Respondent No. 1 has in the reply filed to the rectification proceedings (before IPAB) asserted user since 2011, such a claim is not only contrary to the user claim set out in the Form TM-A but also is entirely unsupported by any material. Furthermore, and crucially, the user claim since 2011 is premised on the fact that such usage was by one Shreeji Motors and Mahindra & Mahindra tractor agency since 2011, located in Gwalior and Gohad. However, there is nothing to support this claim, and even assuming such claim was true, there is nothing to support or show how Respondent No. 1 would be entitled to the benefit of such user claim since Respondent No. 1 has not produced any assignment from Shreeji Motors in

favour of Respondent No. 1.

D. Thus, the Petitioner having established prior use, it is to my mind clear that the impugned registration was obtained in bad faith and only to attempt to usurp the rights of the Petitioner. Respondent No. 1 has clearly filed a false affidavit before the Trade Marks Registry and obtained registration fraudulently. The impugned registration is therefore in violation of Section 11(10) and Section 18 of the Trade Marks Act. The Petitioner's reliance upon the decisions of the Delhi High Court in the case of *Marie Stopes International v. Parivar Seva Sanstha and Another* and *BPI Sports LLC v. Saurabh Gulati and Anr.*, in the facts of the present case is entirely apposite.

15. Hence, for the aforesaid reasons set out in (A) to (D) above, the Petition is allowed in terms of prayer clause (a).

[ARIF S. DOCTOR, J.]