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

*Reserved on: 3 December 2025
Pronounced on: 25 February 2026*

+ LPA 575/2025, CM APPL. 57191/2025, 57192/2025,
57194/2025 & 69956/2025

LANDMARK CRAFTS LIMITEDAppellant

Through: Mr. J Sai Deepak. Sr. Advocate
with Ms. Stuti Wason, Mr. Vipin Wason, Mr.
Avinash Sharma and Mr. Hitesh Kumar,
Advocates.

versus

ROMIL GUPTA TRADING AS SOHAN LAL GUPTA &
ANR.Respondents


Through: Mr. Sanjeev Sindhwani, Sr.
Advocate with Mr. Rajat Bhardwaj, Mr.
Sandeep Khatri and Mr. Ujjwal Bhardwaj,
Advocates.

**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

% **JUDGMENT**
25.02.2026

C. HARI SHANKAR, J.

A. The *lis*

1. The device mark ¹ was registered in favour of
Respondent 1² in Class 6 for self-tapping metal screws and self

¹ "the subject mark" hereinafter

² "the respondent" hereinafter



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drilling screws, *vide* Registration No. 3986970, under Section 23 of the Trade Marks Act, 1999³. The appellant applied, under Section 57 of the Act, for rectification of the register by removal of the subject mark therefrom. By order dated 15 December 2022, the Deputy Registrar of Trade Marks⁴ allowed the application and cancelled the registration of the subject mark. Aggrieved thereby, the respondent appealed to this Court by way of CA (Comm IPD-TM) 1/2023, under Section 91 of the Act. The appeal stands allowed by a learned Single Judge, *vide* judgment dated 14 May 2025. The appellant is in appeal, under Clause X of the Letters Patent applicable to this Court.

B. Facts

2. The respondent filed Application No. 3986970, under Section

23 of the Act, for registration of the mark . User of the mark was claimed from 27 February 2013. First Examination Report⁵ dated 26 November 2018 was issued by the Registrar of Trade Marks⁶, raising objections, to which the respondent replied on 13 December 2018. In the reply, too, the respondent claimed user of the mark since 2013. However, the mark to which the affidavit referred was the

subject mark , and not the mark  for which the respondent had sought registration.

³ “the Act” hereinafter

⁴ “the Dy RTM” hereinafter

⁵ “FER” hereinafter



⁶ “the RTM” hereinafter





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3. On 13 December 2018, the respondent applied for correction of a clerical error in its Registration Application, as it claimed to have inadvertently applied for the mark  instead of . The respondent, therefore, sought permission to amend its application.

4. The request was allowed, and the subject mark  proceeded to registration.

5. The appellant, thereafter, proceed to institute three actions against the respondent, qua the subject mark .

6. On 24 July 2019, the appellant filed a petition⁷ under Section 57⁸ of the Act before the RTM, seeking rectification of the register and cancellation of the subject mark .

7. In September 2019, the appellant instituted CS (Comm) 117/2019⁹ against the respondent, seeking an injunction against use of the  mark by the respondent. The suit is pending. An *ex parte*

⁷ “the rectification petition” hereinafter

⁸ 57. **Power to cancel or vary registration and to rectify the register.**—

(1) On application made in the prescribed manner to the High Court or to the Registrar by any person aggrieved, the Registrar or the High Court, as the case may be, may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar, and the Registrar or the High Court, as the case may be, may make such order for making, expunging or varying the entry as it may think fit.

⁹ **Landmark Crafts Pvt Ltd v. Sohan Lal Gupta**



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ad interim injunction which was granted to the appellant on 7 September 2019, was vacated on 3 October 2019.

8. On 29 July 2020, the appellant filed a complaint before the RTM, alleging irregularities in the grant of registration to the subject

mark. It was alleged, in the said complaint, that the

amendment, sought by the respondent to substitute the

mark

for the mark in the Registration Application, ought not to have been allowed, as it amounted to a substantial alteration, which was not permissible under Rule 37¹⁰ of the Trade Marks Rules, 2017¹¹.

9. On 31 October 2022, the Examiner of Trade Marks¹² issued the following notice to the respondent:

“To

Date: 31.10.2022

1. SH. ROMIL GUPTA
PLOT NO. 11, SECTOR-05, VAISHALI, GHAZIABAD (U.P.)
201010

2. SH. ROMIL GUPTA C/o M/S SOHAN LAL GUPTA
D-62, GROUND FLOOR, SECTOR-48, NOIDA, GAUTAM
BUDDHA NAGAR (U.P) 201301, INDIA

¹⁰37. **Correction and amendment of application.**—An applicant for registration of a trade mark may, whether before or after acceptance of his application but before the registration of the trade mark, apply in Form TM-M accompanied by the prescribed fee for the correction of any error in or in connection with his application or any amendment of his application:

Provided, no such amendment shall be permitted which shall have the effect of substantially altering the trade mark applied for or substitute a new specification of goods or services not included in the application as filed.

¹¹ “the Rules” hereinafter

¹² “the Examiner” hereinafter



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This is to inform that a complaint dated 23.07.2020 received in this office regarding improper registration of the trademark No. 3986970.

Prima facie, it appears that the trademark was applied as

with user claim since 27/02/2013, however, substantial alteration of the trademark and subsequent registration thereof with the same user claim was allowed contrary to the provisions of the Trade Marks Act, 1999 and Rules framed thereunder.

Therefore, a notice under section 57 (4) of Trade Marks Act, 1999 is hereby issued as to why the registration of the aforesaid trademark should not be cancelled being contrary to the provisions of the law.

Hereby, an opportunity is given to you to make submissions, if any, within 21 days hereof as also to be present for hearing on 17.11.2022 before the Registrar of Trade Marks at Trade Marks Registry, IPO Building, Plot No. 32, Sector 14, Dwarka, Delhi failing which appropriate orders shall be passed in the matter.

Yours faithfully


31.10.2022

Sd/-

Examiner of Trademark"

The notice, therefore, was issued to the respondent under Section 57(4)¹³ of the Act.

10. The Dy RTM issued notice to the parties, heard them, and proceeded, *vide* order dated 15 December 2022, to allow the appellant's complaint and cancelled the registration granted to the

subject  mark. In the said order, after reciting the facts, the Dy RTM proceeds to observe and hold as under:

¹³ (4) The Registrar or the High Court, as the case may be, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).



“Thus, while the applicant initially applied the trademark as

SDHP

for registration and claimed use thereof since 27/02/2013

and also filed an affidavit in respect of the trademark **SDHP** stating that he is using the same since 27/02/2013, subsequently, after the issuance of examination report, he filed a TM-M and

requested to amend the trademark from **SDHP** to **SHHP** and filed his reply to the examination report stating that his trademark is

SHHP

(Label) and he adopted **SHHP** (Label) in the year 27/02/2013 and that he has also filed an affidavit since using

SHHP

(Label) from 27/02/2013 rendering his TM-M and statements made in reply to the examination report as incongruous, incorrect and wrong vis-à-vis his deposition in his affidavit of earlier date 25/10/2018 and the contents of the impugned application for registration.

However, as per the e-records, as per note sheet dated 31.12.2018, the aforesaid request by the applicant/regd. proprietor on TM-M

for amendment of the impugned trademark from to **SDHP** to

SHHP

was allowed and the impugned trademark was accordingly amended.

Subsequently, as per e-records, as per note sheet dated 25.01.2019, the impugned trademark as amended was allowed in to be published as ‘advertised before acceptance’ in the Trade Marks Journal No. 1887 dated 04/02/2019 with the same user date i.e. 27/02/2013 as initially stated in the impugned application without considering the inconsistencies pointed out above and without seeking any clarification or asking any explanation from the applicant/regd. proprietor about the same as also without seeking a fresh affidavit and documents in support of the said claim of use of

SHHP

the impugned amended trade mark as per the provisions of Rule 25 (2) of the Trade Marks Rules, 2017. The impugned trademark as amended was accordingly registered vide registration certificate No. 2209211 dated 23.06.2019 rendering its publication in the Trade Marks Journal and its said entry on the Register of



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Trade Marks as erroneous, without sufficient cause and wrongly remaining on the Register and liable to be set aside.

The Ld. Counsel for the regd. proprietor would submit that there has been no substantial change in the impugned trademark consequent to amendment. The request for amendment of the impugned trademark on TM-M has been correctly allowed and the mark has been correctly advertised and registered, therefore, the notice under Section 57(4) must be cancelled/discharged. The Ld. Counsel for the regd. Proprietor cited the decision of Hon'ble IPAB in ORA/132/2014/TM/DEL M/s Palco's Vs. M/s Palbis Quality Confectioners to buttress his submissions.

However, in view of the facts and circumstances noted above and analysis done, the above contentions of the Ld. Counsel for the regd. proprietor do not hold good and are hereby rejected. As regards the case law cited by the Ld: Counsel for the regd. proprietor, it is noted that in the said case, the main objection was that the placement of logo by the respondent No. 1 at the time of fresh filing the application for registration is not as per the terms of the family settlement. Subsequently, the respondent No. 1 agreed to modify the mark strictly in terms of the family settlement and the case was decided accordingly. Thus, the facts of said case are completely different from the facts and circumstances in the present matter, therefore, the same has no application in the present matter.

Accordingly, the entry relating to the impugned trademark is hereby cancelled and the registration certificate No. 2209211 is also revoked forthwith. The advertisement of the impugned

amended trademark in the Trade Marks Journal No. 1887 is also cancelled and the impugned trademark application No. 3986970 is directed to be re-examined taking into account the inconsistencies and irregularities pointed out as above.”

11. Aggrieved thereby, the respondent appealed to this Court *vide* CA (Comm IPD-TM) 1/2023.

12. By the impugned judgment dated 14 May 2025, a learned Single Judge of this Court has allowed the appeal.




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13. Ergo, the present LPA by the appellant.

C. The Impugned Judgment

14. The learned Single Judge has, in the impugned judgment, held that the Dy RTM proceeded in violation of Rule 100(1)¹⁴ of the Rules, which required him to give one month's notice while proceeding under Section 57(4). In cancelling the registration of the  mark granted to the respondent more than three years earlier without conforming with the requirement of Rule 100, the learned Single Judge also finds the Dy RTM to have acted in violation of the principles of natural justice. Worse, notes the learned Single Judge, the Dy RTM did not even wait for 21 days, as stipulated in the notice dated 31 October 2022, and fixed hearing in the matter within 17 days of the notice. The learned Single Judge holds that, as these prescriptions are mandatory, the fact that no objection to this effect was raised by the respondent before the Dy RTM cannot make a difference.

15. The learned Single Judge further observes that, though the notice dated 31 October 2022 was premised on the allegation, in the complaint of the appellant, that the amendment sought in the

¹⁴ 100. **Rectification of the register by the Registrar of his own motion.—**

(1) The Notice, which the Registrar is required to issue under sub-section (4) of Section 57, shall be sent in writing to the registered proprietor, to each registered user, if any, and to any other person who appears from the register to have any interest in the trade mark, and shall state the grounds on which the Registrar proposes to rectify the register and shall also specify the time, not being less than one month from the date of such notice, within which an application for a hearing shall be made:

Provided that no notice shall be required to be sent to the registered proprietor, in case the registered proprietor has requested or agreed in writing for cancellation of the registration; and thereupon register shall be rectified accordingly.





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application dated 13 December 2018 amounted to a substantial alteration in the original application. Rather, notes the learned Single Judge, the Dy RTM, in passing the order dated 15 December 2022,

proceeded on the premise that the  mark, post amendment, was advertised without seeking any explanation or clarification from the respondent, or calling on him to submit a fresh user affidavit. The learned Single Judge notes that, in the notice dated 31 October 2022, failure to furnish a fresh user affidavit after allowing amendment as sought by the respondent on 13 December 2018, was not cited as a

ground on which the registration of the subject  mark was proposed to be cancelled. In fact, observes the learned Single Judge, the Dy RTM ought to called upon the respondent to furnish a fresh user affidavit, if he felt it essential.

16. On merits, the learned Single Judge has, in the following passage from the impugned judgment, held that there was no

“substantial alteration” of the  mark originally applied for:

“16. The amendment carried out by the appellant in the present case was that the two letters “S” and “D” were originally placed horizontally in the applied mark, which were subsequently placed vertically byway of the amendment. The subject mark continued to have the same four letters “S”, “D”, “H” and “P” wherein the letters “S” and “D” continued to be in smaller font as compared to the letters “H” and “P”. By no stretch of imagination can this be termed as “substantial alteration”.”

17. On the basis of these observations and findings, the learned Single Judge has, in the impugned judgment, quashed and set aside



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the order dated 15 December 2022 passed by the Dy RTM. Even while doing so, the learned Single Judge has entered a caveat to the effect that the observations contained in the impugned judgment would have no effect on the rectification petition filed by the appellant.



18. The appellant is in appeal.

D. Rival Contentions

I. Submissions of Mr. J. Sai Deepak for the appellant

19. Arguing for the appellant, Mr. Sai Deepak, learned Senior Counsel, submits that the original application filed by the respondent on 30 October 2018 sought registration of the  mark. Significantly, the mark was a device mark, not a word mark. User was claimed of 27 February 2013. He draws attention to the following assertion, in the user affidavit accompanying the application:

“I state that we have been using the mark since 27/2/2013.”


The mark, to which the affidavit alludes, he pointed out, as reflected in the affidavit itself, is . A user claim of 27 February 2013 for a device mark , he submits, obviously cannot cover the device




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mark . The change of mark, in the application dated 13 December 2018, submits Mr. Sai Deepak, was “substantial” even on this ground alone.

20. Mr. Sai Deepak submits that the application dated 13 December 2018 was cleverly strategized. He points out that, in the FER dated 26

November 2018, the device mark  of one Surendra and the “HP” word marks of the appellant were cited as rival marks, and that, in order to get over it, the respondent flipped the “SD” from an erect

 to a supine  position.

21. Mr. Sai Deepak submits that, if Rule 37 of the Rules is read in conjunction with Rule 25(1)¹⁵ thereof, it is manifest that it was incumbent on the Dy RTM to call for a fresh user affidavit before allowing the amendment as sought in the application dated 13 December 2018, as it amounted to a substantial alteration in the mark. He relies, for this purpose, on the judgment of one of us, rendered sitting singly, in *MVS Eduexcellence Pvt Ltd v. Registrar of Trademarks*¹⁶. The failure to file a fresh user affidavit, he submits, violated the mandate of the Rules.

22. Mr. Sai Deepak submits that the learned Single Judge has erred in setting aside the order dated 15 December 2022 on the ground that

¹⁵ 25. **Statement of user in applications.**—

(1) An application to register a trade mark shall, unless the trade mark is proposed to be used, contain a statement of the period during which, and the person by whom it has been used in respect of all the goods or services mentioned in the application.

¹⁶ (2023) 93 PTC 457




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proper procedure had not been followed. In fact, the respondent, he submits, was served twice, firstly on 30 September 2022 and, on the report that service had not been effected, again on 31 October 2022. On the aspect of substantial alteration, Mr. Sai Deepak draws attention to the following allegation, contained in para 9 of the complaint dated 23 July 2020:

“9. That, as is obvious from the above, registration of

trademark (device) , was obtained by M/S Sohan Lal Gupta fraudulently as in the application for registration of trademark dated 30/10/2018 all the alphabets S,D,H.P written in the left to right direction however the size of the alphabets SD is almost 1/4th of the size of the alphabets HP. Contrary to this, the Applicant M/s Sohan Lal Gupta in the reply of Examination Report to the Registrar of Trade Marks dated 13/12/2018 has mentioned

the device mark  in such a way that the alphabets SD are written in bottom to top direction and the alphabets HP is written in left to right direction. Moreover, the size of the alphabets SD is stretching up to the length of the alphabets HP which is completely different from the mark depicted by the Applicant M/s Sohan Lal Gupta in the application for registration of trademark. Hence, the alteration in the mark applied for by the Applicant Mr. Romil Gupta was substantial in nature within the meaning of Rule-37 of the Trade Mark Rules, 2017 under which such a change was not permissible.”

23. The Dy RTM, submits Mr. Sai Deepak, passed the order dated 15 December 2022 after hearing the parties and considering the arguments advanced. No objection was taken, before him, to the effect that he had proceeded in breach of the time periods stipulated in the Rules. Adverting to the said order, Mr. Sai Deepak submits that no documents, supporting the user affidavit, were filed by the respondent at the time of the application dated 13 December 2018. As such, if the impugned judgment were to be upheld, it would entirely absolve the



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respondent of the requirement of submitting an affidavit supporting its user claim.

24. Mr. Sai Deepak submits that the period of one month stipulated in Rule 100(1) of the Rules should be treated as directory unless failure to comply therewith results in prejudice. By failing to raise any objection in that regard during the hearing, Mr. Sai Deepak submits that the respondent is now estopped from raising the ground.

25. Mr. Sai Deepak further submits that the learned Single Judge was in error in observing that the aspect of failure to file a fresh user affidavit was not mentioned in the notice dated 30 September 2022, which specifically noted that the amendment was for a substantially altered mark with the same user claim. The failure to file a user affidavit and supporting documents, he submits, breached Rule 25(2).

26. Mr. Sai Deepak further submits that a mere visual comparison of the  and  marks makes it clear that there was a substantial alteration.

II. Submissions of Mr. Sanjeev Sindhvani

27. Mr. Sindhvani submits that the learned Single Judge has amply protected the appellant's rights in para 20 of the impugned judgment by the clarification that the rectification petition filed by the appellant would be decided uninfluenced by the impugned judgment. As such, he submits, the appellant has suffered no prejudice.



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28. In so far as Mr. Sai Deepak's contention that no affidavit of user was filed by the respondent with the original application dated 30 October 2018 for registration of the **SDHP** mark is concerned, Mr. Sindhvani submits that no such allegation was contained in the Show Cause Notice dated 31 October 2022 issued to the respondent. He further submits that the order dated 15 December 2022, having been passed under Rule 37 of the Rules, was appealable under Section 91 thereof, but no appeal was preferred by the appellant.

29. Mr. Sindhvani submits that the respondent did submit a user affidavit, dated 25 October 2018, with its original registration application dated 30 October 2018. The FER was issued on 26 November 2018. The application for correction was submitted on 13 December 2018 along with the reply to the FER. It was specifically pleaded, in both the correction application as well as in the reply to the FER that the subject mark had been adopted by the Respondent on 27 February 2013. Both were accepted by the Dy RTM.

30. In this view of the matter, Mr. Sindhvani submits that there was no reason for the Dy RTM, in the order dated 15 December 2022, to observe that the statements made by the respondent in his reply to the FER was incongruous, incorrect and wrong vis-à-vis what he had stated in his earlier user affidavit dated 25 October 2018 and in his registration application.



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31. Mr. Sindhvani further submits that there is no error in the finding, of the learned Single Judge, that the order dated 15 December 2022 had been passed in breach of Rule 100(1) of the Rules. The notice dated 30 September 2022, he submits, was never served on his client, and the envelope, whereunder the notice was purported to have been sent to him, bore the endorsement “no such person”. The envelope was also part of the record. The notice which was served on the respondent was dated 31 October 2022. There was, therefore, no error in the finding of the learned Single Judge that the order dated 15 December 2022 not only breached Rule 100(1) of the Rules, but also breached the period of 30 days stipulated in the notice itself, as hearing was fixed 21 days after the notice was served on the Respondent.

32. Mr. Sindhvani refutes Mr. Sai Deepak’s contention that the period of one month stipulated in Rule 100(1) was directory. He submits that Section 57(4) specifically required the Registrar to serve notice “in the prescribed manner”. “Prescribed” is defined in Section 2(s) as prescribed by Rules made under the Act. As such, the period of one month envisaged in Rule 100(1) of the Rules is to be regarded as mandatory, applying the principle enunciated by the Privy Council in *Nazir Ahmed v. King Emperor*¹⁷.

33. Mr. Sindhvani further submits that Rule 37 enabled an applicant, who had applied for registration of a trade mark, to seek correction in the application. It did not envisage submission of any fresh user affidavit.

¹⁷ AIR 1936 PC 253



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34. Adverting to the order dated 15 December 2022, passed by the Dy RTM, Mr. Sindhwani submits that the observation that the application, as amended, “was allowed to be published in the Trade Marks Journal with the same user date, i.e. 27/02/2013 as initially stated in the impugned application without considering the inconsistencies pointed out above and without seeking any clarification or asking any explanation from the applicant... is also without seeking a fresh affidavit and documents in support of the said claim of use of the impugned amended trademark” travelled beyond the notice dated 31 October 2022 served on the Respondent. There is, in the said order, he points out, no finding of substantial alteration.

35. In fact, submits Mr. Sindhwani, the order dated 15 December 2022 was fundamentally unreasoned. Reasoning, supporting the conclusion in an order, he submits, is a necessity.

36. In any case, reiterates Mr. Sindhwani, the appellant stands amply protected by para 20 of the impugned judgment and, therefore, there was no cause to prefer the present appeal.

III. Submissions of Mr. Sai Deepak in rejoinder

37. Mr. Sai Deepak submits, in rejoinder, that Rule 57(4) is independent of Rule 57(1) and that *suo motu* power can also be exercised at the instance of a third party. He, however, fairly conceded that there was no compliance with the requirement of one month’s notice envisaged in Rule 100(1) of the Rules, and that he had no



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objection to the appellant's complaint dated 29 July 2020 being remanded to the Dy RTM for consideration afresh after giving 100 days' notice to the respondent. His objection was that the learned Single Judge proceeded to justify the order dated 15 December 2022 on merits.

38. On merits, Mr. Sai Deepak submits that the finding, of the learned Single Judge, that there had been no substantial alteration between the amended mark and the mark for which registration have originally been sought, was myopic. He submits, without prejudice, that, if, for the sake of argument, it were to be presumed that there was no substantial alteration, the consequence would be that the original FER would revive. This aspect has been ignored by the learned Single Judge. If, on the other hand, there is a substantial alteration, then Rule 25 would require the submission of a fresh user affidavit by the Respondent. This was an aspect which was also reflected in the show cause notice dated 31 October 2022 which, *inter alia*, noted that the amendment had been allowed with the same date of user.

39. Mr. Sai Deepak finally places reliance on Clause 3.2.7 of the Manual of Trade Marks Practice & Procedure of the Trade Marks Office, which reads as under:

“Attending to request made in Form TM-16 for change in the application details

A correction of any error in the application or any amendment in the application is permitted by the Trade Marks Act.

An applicant for registration of a trade mark may, before the registration of the mark, apply in Form TM-16 accompanied by the



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prescribed fee for the correction of any error in his application or any amendment of his application.

This provision is made for correction of mere clerical errors in the application. No correction shall therefore be allowed which seeks substantial alteration in the application as filed. The substantial amendment in the trademark, proprietor details, specification of goods/services (except deletion of some of the existing items, statement as to the use of mark shall not be permitted in the name of correction.

However request for amendment as to change in the proprietorship of the mark on the basis of valid assignment or transmission; amendment in address of the applicant or in the applicant address for service; deletion confinement, clarification of specification of goods/services, confinement/limitation in the area of sale of goods/rendering of service, division of multiclass application etc. can be allowed.”

E. Analysis

40. The Dy RTM rejected the respondent’s application dated 13 December 2018, preferred under Rule 37 of the Rules. The learned Single Judge set aside the order, and held the application dated 13 December 2018 to be justified. We are required to examine whether any scope exists, in exercise of our Letters Patent jurisdiction, to interfere with the decision of the learned Single Judge.

41. Mr. Sai Deepak, during hearing, was agreeable to a remand of the notice dated 31 October 2022 to the Dy RTM for decision afresh, as Rule 100(1) of the Rules had been breached, though he asserts that the provision is not mandatory.

42. The plea that the stipulation of one month’s notice, as stipulated in Rule 100(1), has, to our mind, necessarily to be regarded as



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mandatory. Mr. Sai Deepak submits that such a provision can be regarded as mandatory only if failure to comply with it results in prejudice. We fail to understand what greater prejudice could result than cancellation of the registration of the trade mark registered in favour of the respondent.

43. Besides, the plea that the provision is not mandatory absent evidence of prejudice has, to our mind, no legs to stand on. Mr. Sindhvani correctly invokes the trite principle, redolent from *Taylor v. Taylor*¹⁸ through *Nazir Ahmed* through a veritable plethora of judgments of the Supreme Court, till as late as *Independent Sugar Corpn. Ltd. v. Hindustan National Gas & Industries Ltd.*¹⁹, that, when the statute requires a particular act to be done in a particular manner, that act has to be done in that manner alone, or not done at all, all other modes of performance being necessarily forbidden. The prescription of one month's notice in Rule 100(1) is, therefore, clearly mandatory, and the decision dated 15 December 2022 was, therefore, liable to be set aside even on the ground of having breached the said stipulation.

44. We are not prepared to countenance the submission, of Mr. Sai Deepak, that, no objection to that effect having been raised by the respondent at the stage of hearing by the Dy RTM, the respondent was estopped from doing so before this Court. The requirement of compliance with the mandate of Rule 100(1) cannot be subject to any principle of estoppel.

¹⁸ (1875) LR 1 Ch D 426

¹⁹ (2025) 5 SCC 209



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45. What remains, then, is the issue of whether the learned Single Judge was correct in allowing the respondent's application dated 13 December 2018 on merits.

46. There was, clearly, no legal embargo on the learned Single Judge doing so. Having held the Dy RTM to have contravened Rule 100(1), it was open to the learned Single Judge either to remand the matter to the Dy RTM for reconsideration, or to consider the matter on merits. If he chose the latter option, thereby avoiding another stage of litigation, no fault can be found therewith. It is settled that, if the material on the basis of which the Court can arrive at a decision on merits is available with it, it should ordinarily avoid remanding the matter for a decision *de novo*.²⁰

47. We, therefore, are required to examine whether, within the scope of letters patent jurisdiction, there exists any scope to interfere with the decision of the learned Single Judge to set aside the order dated 15 December 2022 on merits.

48. The scope of an LPA stands tellingly underscored in the following passage from *Baddula Lakshmaiah v. Sri Anjaneya Swami Temple*²¹:

“A letters patent appeal as permitted under the letters patent is normally an intra-Court appeal whereunder Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise

²⁰ Refer *Arvind Kumar Jaiswal v. Devendra Prasad Jaiswal Varun*, 2023 SCC OnLine SC 146, *Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277, and *Bachahan Devi v. Nagar Nigam, Gorakhpur*, (2008) 12 SCC 372

²¹ (1996) 3 SCC 52



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of the same jurisdiction as was vested in the single Bench. Such is not an appeal against an order of a subordinate Court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language”.

49. A coordinate bench of this Court has recently, in *Sawhney Rubber Industries v. Workmen*²², observed thus:

“17. Coming to the instant appeal, the scope of interference by this Court is confined to examining whether the learned Single Judge has committed any error of law in declining to interfere with the Award of the learned Industrial Tribunal in favour of the respondent workmen. This Court's jurisdiction in a Letters Patent Appeal is limited to rectifying errors of law and does not extend to re-appreciation of evidence or substituting its own findings for those of the learned Industrial Tribunal, unless the findings are perverse or lack any evidentiary basis.”

This view was echoed, even more recently, by another Division Bench of this Court in *Punjab & Sind Bank v. K.S. Sethi*²³.

50. The learned Single Judge has returned a finding, on merits, in para 16 of the impugned judgment (reproduced *supra*) that the

substitution of the  mark with the  mark did not involve any “substantial alteration”. This finding is purely subjective in nature.

51. Rule 37 of the Rules allows an applicant, seeking registration of a trademark, to apply for correction of any error in connection with his application or any amendment of his application. The words “any error” are wide and compendious. Any mistake which might have

²² 2025 SCC OnLine Del 7784

²³ Judgment dated 11 August 2025 in LPA 968/2013 [*Punjab & Sind Bank v. K.S. Sethi*]



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been committed by the applicant while applying for registration is encompassed within it.

52. The word “amendment”, unqualified as it is, is also compendious, though perhaps to a lesser degree than the expression “error”. Wharton’s Law Lexicon defines “amendment” as “a correction of any errors in the pleadings in actions, suits or prosecutions”.

53. Viewed *de hors* the proviso, therefore, Rule 37, by use of the words “any error” and “any amendment”, confer vast latitude to the applicant seeking registration of a trade mark to apply for correction.

54. The proviso to Rule 37, however, restricts its scope, but to an extent. It states, *inter alia*, that no amendment shall be permitted which shall have the effect of *substantially altering* the trademark applied for. It does not, however, provide any yardstick by which to gauge whether an alteration of a trade mark, applied for, is, or is not, “substantial”.

55. The Supreme Court, in *Santosh Hazari v. Purushottam Tiwari*²⁴, has defined “substantial”, albeit in the context of the expression “substantial question of law”, as meaning “having substance, essential, real, of sound worth, important or considerable”. There is no reason why this same understanding of the expression “substantial” should not inform the interpretation of the expression as used in the proviso to Rule 37.

²⁴ (2001) 3 SCC 179



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56. In any event, the legislature has clearly used the expression “substantial” deliberately, and we have, therefore, to accord it due respect. Not every alteration in the trade mark applied for, as sought under Rule 37, is impermissible; it is only *substantial* alteration that is proscribed.

57. We do not find, in Rule 37, any requirement of submitting any fresh affidavit of user. We are clear in our mind that a requirement, which is not to be found in the statute, cannot be imposed by judicial fiat. If the alternation in the mark is substantial, the very application for correction under Rule 37 would be liable to be rejected. The question of a fresh affidavit of user, then, becomes redundant. If, on the other hand, the alteration is not substantial, the claim of user of the original mark would obviously apply, equally, to the altered mark, as the alteration is insubstantial in nature.





58. Mr. Sai Deepak’s submission that the respondent was required to submit a fresh affidavit of user, by juxtaposing Rules 25 and 37 cannot, therefore, be accepted. This submission, to our mind, overlooks the distinction between a substantial, and an insubstantial, alteration of the mark earlier applied for. The proviso to Rule 37, when read with the main part of the provision, would make matters clear. When read as a whole (including the proviso), Rule 37 allows *correction of an error* which includes an *alteration of the mark applied for, which is not substantial*. Advisedly, therefore, the legislature did not deem it necessary to call on the Rule 37 applicant to submit a fresh affidavit of user.



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59. Mr. Sai Deepak's submission that the initial user affidavit, which applied to the  mark, would not cover the  would obviously not merit acceptance, once it is held that the respondent had *erroneously* applied for registration of the former mark instead of the latter, and that there was no substantial alteration of the mark. In such circumstances, the claim of user of the  mark – which was erroneously applied for – would obviously also cover the “corrected”  mark.

60. Of course, it would always be open to the appellant to question the correctness of the claim of user of the respondent in its rectification proceedings. We express no view thereon.

61. The submission of Mr. Sai Deepak that the respondent was required to submit a fresh user affidavit cannot, therefore, be accepted.

62. All that remains, then, is to examine whether the view, of the learned Single Judge, that the substitution of , with , as the mark of which registration was being sought, involved no “substantial alteration”. The learned Single Judge has arrived at a conclusion that it does not, after a meticulous comparison of the two marks. In the absence of any yardstick, otherwise prescribed, regarding the manner in which the stipulation of “substantial



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alteration” is to be assessed, and applying the understanding of the expression “substantial” as defined by the Supreme Court in *Santosh Hazari*, the approach of the learned Single Judge commends deference. The view being purely subjective, we see no reason to differ therewith, within the limited scope of letters patent jurisdiction.

Conclusion

63. We, therefore, see no reason to differ with the view expressed by the learned Single Judge.

64. The appeal is dismissed.

65. We, however, reiterate the caveat, entered by the learned Single Judge, that the views and opinions expressed herein, or in the impugned judgment of the learned Single Judge, would not impact, influence or affect the adjudication of the rectification petition preferred by the appellant, or any other cognate proceedings between them.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 25, 2026

dsn