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

\+ C.A.(COMM.IPD-TM) 135/2021

GIRI PRASAD .....Appellant

Through: None.

versus

REGISTRAR OF TRADE MARKS .....Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC, with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday and Mr. Sagar Mehlawat, Advs.

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\+ C.A.(COMM.IPD-TM) 151/2022

GIRI PRASAD PROP. GIRI MOMIS CENTER .....Appellant

Through: None.

versus

REGISTRAR OF TRADE MARKS, DELHI .....Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC, with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday and Mr. Sagar Mehlawat, Advs.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 18.09.2024

1. None has appeared for the appellant when the matter has been called out during the first call or even after Passover.

2. The present appeals have been filed challenging the order dated 17th June, 2019 passed by the respondent rejecting the registration of the mark 'GIRI MOMO'S CENTRE' under application no. 3102831 in Class 35.

3. As per the appeal, the appellant runs a business in Pitampura, for

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Momos and Chinese food and has been running the same since the year 2012. As per the appellant, the appellant's mark is distinctive and has three words unrelated, wherein, two have dictionary meaning and the word 'Giri' is appellant's own name. The appellant had made use of the mark since 01st April, 2012 and the appellant has several Government issued documents towards the said name.

4. It is further the case of the appellant that the appellant has a social media presence and is recognized widely in the public.

5. Per contra, learned counsel for the respondent submits that in the present appeal, the appellant has placed on record certain new documents, which were never placed before the Trademark Registry.

6. Learned counsel for the respondent submits that in both the matters, i.e., *C.A.(COMM.IPD-TM) 135/2021* and *C.A.(COMM.IPD-TM) 151/2022*, fresh documents have been filed by the appellant, as Annexure I colly; Annexure J colly; and Annexure K colly. These documents have been filed for the first time before this Court, and the same were never filed or produced before the Trademark Registry.

7. Considering the aforesaid submission, this Court cannot consider any fresh documents for the first time in order to adjudicate upon the claim of the appellant.

8. Thus, considering the fact that new documents have been filed by the appellant, which were never filed before the Registrar of Trademarks, it is imperative that these fresh documents are placed on record, before the Registrar of Trademarks, in order for the said authority to consider the fresh documents, and adjudicate, thereto.

9. Without going into the merits of the case of the appellant, considering

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the fact that certain new documents have been filed by the appellant, which have never been filed before the Registrar of Trademarks, this Court is of the view that the appellant ought to approach the Registrar of Trademark in a fresh application and bring on record, all the requisite documents.

10. Accordingly, the appellant is granted liberty to approach the Registrar of Trademarks afresh, and file a new application before the Registrar of Trademarks for granting registration in his favour. All the fresh documents which have been filed before this Court for the first time, shall be filed by the appellant before the Registrar of Trademarks, along with the fresh application.

11. Upon filing of the fresh application by the appellant, along with all the requisite documents, including, the fresh documents that have been filed before this Court for the first time, the Registrar of Trademarks shall consider the case of the appellant, *de novo*.

12. With the aforesaid directions, the present appeals are disposed of.

MINI PUSHKARNA, J

SEPTEMBER 18, 2024
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