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

Reserved on: 30th, October, 2025
Date of Decision: 10th March, 2026
Date of Uploading: 11th March, 2026

\+ C.O. (COMM.IPD-TM) 86/2022

BENNETT, COLEMAN AND COMPANY LIMITED .....Petitioner
Through: Mr. Hemant Singh, Mr. Akhil Saxena, Ms. Pragya Jain & Ms. Palak Batra, Advs.

versus

E ENTERTAINMENT TELEVISION LLC AND ANR.
.....Respondents
Through: Ms. Shwetashree Majumdar with Ms. Priya Adlakha & Ms. Devyani Nath, Advs.
Ms. Radhika Bishwwajit Dubey, CGSC, Ms. Gurleen Kaur & Mr. Kritarth Upadhyay, Advs. for R-2.

\+ C.O. (COMM.IPD-TM) 243/2022

BENNETT, COLEMAN AND COMPANY LIMITED .....Petitioner
Through: Mr. Hemant Singh, Mr. Akhil Saxena, Ms. Pragya Jain & Ms. Palak Batra, Advs.

versus

E1 ENTERTAINMENT TELEVISION, LLC ANR ANR.
.....Respondents
Through: Ms. Shwetashree Majumdar with Ms. Priya Adlakha & Ms. Devyani Nath, Advs.

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 2999/2025 in C.O. (COMM.IPD-TM) 86/2022
I.A. 2998/2025 in C.O. (COMM.IPD-TM) 243/2022

1. These are identical applications filed by the Petitioner under Rule 7(viii) of the Delhi High Court Intellectual Property Rights Division Rules, 2022 ['IPD Rules'] read with Section 104 of the Bharatiya Sakshya Adhiniyam, 2023 ['BSA 2023'] and Section 151 of the Code of the Civil Procedure, 1908 ['CPC'] seeking permission to cross-examine Ms. Monique Cheng, the witness of Respondent No. 1 [hereinafter referred to as 'RW-1'].

2. C.O. (COMM.IPD-TM) 243/2022 has been filed by the Petitioner under Section 57 of the Trade Marks Act, 1999 ['Act of 1999'] challenging the validity of the Respondent No. 1's registration of the trademark  /E! ['impugned mark'], vide registration no. 1252812 dated 02.12.2003 in Classes 38 and 41 claiming use since 07.07.1993. The rectification petition challenges the impugned mark's validity on the grounds, that it is liable to be cancelled under Section 47(1)(b) of the Act of 1999 due to 'non-use in India' for a continuous period exceeding five years and three months prior to the filing of the rectification petition, and that it lacks 'distinctive character'.

3. C.O. (COMM.IPD-TM) 86/2022 has been filed by the Petitioner under Section 57 of the Act of 1999, challenging the validity of the

Respondent No. 1's registration of the impugned mark vide T.M. No. 2340887 dated 31.05.2012 in Class 38, filed on 'proposed to be used' basis. The rectification petition challenges the impugned mark's validity on the grounds that it lacks 'distinctive character' and is not registrable without evidence of use in India, under Section 9(1)(a) of the Act of 1999, which Respondent No. 1 allegedly failed to provide.

4. Both the captioned applications, filed to the underlying petitions, the Petitioner seeks permission to cross-examine RW-1 raising similar grounds and, therefore, has been argued together by the learned counsels for the parties. The parties have made common submissions for both the applications and have relied upon similar authorities/precedents. Therefore, through this order, the Court shall decide both the applications together.

Submissions on behalf of the Petitioner

5. Mr. Hemant Singh, learned counsel for the Petitioner summarised the Petitioner's contentions seeking to cross-examine RW-1, as under: -

5.1 He stated that Respondent No. 1 has improperly relied upon the impugned mark to oppose Petitioner's registration of its mark 'E NOW' in Classes 38 and 41, in an attempt to claim an unwarranted monopoly over the letter 'E' in conjunction with the exclamation mark. He stated that the impugned mark is devoid of distinctive character and ought not to have been granted registration.

5.2 He stated that Respondent No. 1, in its counter statement filed before the registry, alleged use of the impugned mark since the early 1990s and claimed that it has acquired extensive reputation and goodwill through broadcasts and related activities.

5.3 He stated that after the issues were framed in the captioned petitions

vide order dated 03.05.2023, the parties had submitted that the present matter necessitates trial. In view thereof, Respondent No. 1 filed its evidence by way of affidavit of Ms. Monique Cheng (RW-1) on 07.10.2023 to support the claimed use of the impugned mark since 1990's.

5.4 He stated that the Petitioner is constrained to seek cross-examination of Respondent No. 1's witness, Ms. Monique Cheng (RW-1), as mere filing of documents does not constitute proof of use, and the Respondent's purported claim of use, since the 1990s amounts to a clear misrepresentation before the Trademark Registry and this Court.

5.5 He contended that it is a settled law that any party is entitled to cross-examine the other party and no evidence affecting a party is admissible unless the latter has had an opportunity to test its truthfulness/correctness by cross-examination. He stated that by allowing the opposing party to test the credibility and reliability of witnesses and documents, cross-examination upholds the principles of natural justice and prevents one-sided or untested evidence from prejudicing the case. He relied upon the judgment of the Supreme Court in **Union of India v. T.R. Varma**[1] and **Bareilly Electricity Supply Co. Ltd. v. Workmen and Others**[2].

5.6 He referred to Rule 7(viii) and Rule 29 of the IPD Rules as well as Order XIX Rule 2 CPC and Section 142 of BSA to assert a vested right in the Petitioner to seek cross-examination of Ms. Monique Cheng\RW-1.

5.7 He states that in view of the aforesaid, this Court be pleased to allow the present application, so as to ensure a fair, just, and effective adjudication of the dispute at hand.

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[1] 1957 SCC OnLine SC 30 [Paragraph no. 10]
[2] (1971) 2 SCC 617 [Paragraph nos. 10 and 14]

Submissions on behalf of the Respondent

6. In response, Ms. Shwetashree Majumdar, learned counsel for the Respondent, summarised the Respondent's contentions as under: -

6.1 She stated that her submissions are limited to the Petitioner's application seeking leave to cross-examine Respondent No. 1's witness, Ms. Monique Cheng (RW-1).

6.2 She stated that vide order dated 03.05.2023, this Court directed that the issue of cross-examination will be considered after both parties filed their evidence by way of affidavit. Subsequently, the Petitioner filed its evidence affidavit on 13.09.2023 and Respondent No. 1 filed its evidence affidavit on 07.10.2023.

6.3 She stated that after an inordinate and inexplicable delay of more than one [1] year, the Petitioner moved the present application on 28.01.2025 seeking cross-examination of Respondent No. 1's witness on the following grounds:

6.3.1 The documents relied upon by Respondent No. 1's witness RW-1 in her evidence affidavit to support its user claim, *originate* from the USA.

6.3.2 The subject mark is devoid of any distinctive character.

6.3.3 The Respondent No. 1 has applied for registration of the impugned mark before the Trademark Registry with a false user claim.

6.3.4 Right to cross-examination is an "indelible right" of the Petitioner in case of disputed facts.

6.4 She stated that the aforementioned grounds raised by the Petitioner are frivolous and not sufficient for the reasons as under: -

6.4.1 The documents downloaded from the internet do not have a country of origin. The documents being relied upon by the witness RW-1 are

YouTube videos, online articles, domain registrations, extracts of web archives and international trademark registrations, which are publicly available records. Therefore, oral evidence is not required to prove the contents of the document in accordance with Section 54 of the BSA, 2023. In fact, existence of the 1993 YouTube video exhibited by RW-1, which is the earliest evidence of use of the impugned mark as filed by Respondent No.1, stands admitted by the Petitioner in its affidavit of admission and denial.

6.4.2 The enquiry before this Court in the present rectification petition is limited to the aspect of the distinctiveness of the Respondent's mark under the narrow scope of Section 9(1)(a) of the Trade Marks Act, 1999 ['Act of 1999'], which enquiry does not hinge upon the oral evidence of a witness. The enquiry instead pertains to the Court's review based on the subject mark, documents on record, applicable law and established precedents on the subject. She relied upon the judgment of the Coordinate Bench of this Court in **The Financial Times v. The Times Publishing House Ltd.**[3]

6.4.3 There is no inherent right in the Petitioner to cross-examine in rectification proceedings merely because a party has filed affidavit by way of evidence under the Act. Under Rule 7(iii) of the IPD Rules, it is the Court's discretion to allow cross-examination if deemed necessary, for the reasons to be recorded in writing. It is settled position of law that cross-examination in summary proceedings has to be used sparingly, where after reading the affidavit and documents on record, no conclusion could be arrived at, otherwise it would frustrate the proceedings. She relied upon the

[3] (2016) 234 DLT 305 [Paragraph no. 41]

judgment of this Court in **Onyx Therapeutics v. Union of India & Ors.**[4]

6.4.4 The rectification proceedings before the Trademark Registry are regulated by Trade Marks Rules, 2017 and evidence is filed and accepted in the registry in the manner set out at Rules 45 to 51, which does not contemplate right of cross examination as a matter of vested right. It is stated that before the Trademark Registry rectification petitions are heard and decided in ordinary course on the basis of evidence affidavit filed in support of its pleadings. Learned counsel for the Respondent stated that the procedure cannot be different only because the petition is being heard before the High Court.

6.4.5 Learned counsel refers to Rule 7 (i) pertaining to filing of rectification petitions, Rule 8(i) pertaining to writ petitions and Rule 10(i) and (ii) pertaining to appeals under the IPD Rules to contend that filing of pleadings supported by affidavit is the ordinary procedure to be followed for the proceedings instituted before the IPD. She contends therefore the right reserved to permit recording of oral evidence and cross-examination under Rule 7(viii) of the IPD Rules is not a vested right of the party and is to be permitted for reasons to be recorded in the order of the Court.

6.4.6 It is settled position of law that evidence of *use* of the mark is not required to establish distinctiveness under Section 9(1)(a) of the Act of 1999 and relies upon **Abu Dhabi Global Market v. Registrar of Trademarks**[5]. Hence, cross-examination serves no purpose.

6.4.7 It is settled position of law that the burden of proving non-user of a

[4] 2019 SCC Online Del 11881 [Paragraph no. 24]
[5] 2023 SCC OnLine Del 2947 [Paragraph Nos. 22-23]; **Muneer Ahmad v. Registrar of Trade Marks**, 2023 SCC OnLine Del 7345 [Paragraph Nos. 8-11]

mark will always be on the petitioner and such burden has to be strictly discharged. The Petitioner in the present case has not discharged its onus and by seeking the cross-examination of the Respondent's witness, the Petitioner is trying to fill the lacuna of its case. In this regard she relied upon the judgment of the High Court of Madras in **Nike Innovate C.V., v. Lunar Rubbers Pvt. Ltd. & Anr.**[6].

6.5 She stated that the Petitioner has failed to demonstrate any specific facts deposed by Respondent No.1's witness RW-1 that warrant her cross-examination. She stated that if such frivolous applications were to be allowed, it would open the doors to cross examination in every trademark cancellation petition, which is contrary to the intent of Rule 7(viii) of the IPD Rules and the Trade Marks Rules, 2017.

6.6 She prayed that the Petitioner's applications seeking cross-examination be dismissed and the matter shall proceed to final arguments.

Findings and Analysis

7. This Court has heard the learned counsel for the parties and perused the record.

8. The Respondent has not filed any reply to the captioned applications however; its written submissions are on record.

9. The reasons sought for cross-examining the witness, Ms. Monique Cheng/RW-1 is identical in the captioned applications, and are set out at paragraph 7 of the applications, which reads as under:

> "7. It is respectfully submitted that the Respondent No. 1 filed its evidence by way of affidavit of Ms. Monique Cheng on 07.10.2023 to support such facts. A cursory look at such documents revealed that the country of origin is The United States of America. Devoid of any trans-

[6] (T) OP (TM) Nos. 312 to 323 of 2023, dated 26.06.2024 [Paragraph No. 55]

> border reputation, the impugned mark ought to be cancelled for non-use and falsity of user claim. In view of such misleading and baseless averments, it is imperative for the Petitioner to call upon the witness to corroborate upon the testimony given by the witness Ms. Monique Cheng."

No ground for Cross-examination in I.A. 2998/2025

10. In C.O. (COMM. IPD-TM) 243/2022 the Petitioner has sought to challenge the registration of the impugned mark on the plea that the claim of the user of the impugned mark in India since 07.07.1993 made by Respondent No. 1, is false as well as, on the ground that the mark is not distinctive.

It is stated that Respondent No. 1 had filed the application for the impugned mark on 02.12.2003 and claimed user of the same since 07.07.1993. The said user claim has been challenged on the grounds set out in paragraph 10 (ii) of the said petition. The Petitioner has stated that the trademark registration No. 1252812 is liable to be cancelled under Section 47(1)(b) of the Act of 1999, due to non-use in India for a continuous period exceeding five years and three months prior to the filing of the rectification petition.

11. Learned counsel for the Respondent No. 1 has contended that all the documents relied upon by the witness RW-1 in her affidavit are publicly available records. It is stated that no oral evidence is sought to be led by the said witness and the evidence affidavit has been filed only to exhibit the said documents.

12. Learned counsel for the Petitioner has contended that the right of the Petitioner in a cancellation petition to cross-examine the witness of the respondent is inherent and must be granted if prayed for.

13. However, in the considered opinion of this Court, the said contention of the Petitioner has no basis in law and is contrary to the scheme of the law governing cancellation petitions under the Act of 1999.

14. Rule 7(viii) of the IPD Rules, which has been relied upon by the Petitioner to maintain the present application, expressly provides that if the Court considers it necessary to permit cross-examination, it must record reasons for doing so. The Rule therefore makes it clear that cross-examination is not the norm but an exception, and petitions are ordinarily to be decided on the basis of pleadings and evidence by way of affidavits. Therefore, unless there exist justifiable reasons warranting the permission of cross-examination of a witness, the petitions are ordinarily to be decided on the basis of the affidavits placed on record.

15. This Court has perused the affidavit of the witness RW-1 and notes that the witness is not deposing on any oral facts. The verification clause of the evidence affidavit clearly states that the entire deposition is based on the official records of the company and is not based on any personal knowledge of the witness. The assertions made in the evidence affidavit are thus based on the documents referred to in the affidavit.

16. The reliance placed by the Respondent No. 1 on the judgment of the Coordinate Bench of this Court in **The Financial Times** (supra) is apposite and in my considered opinion authoritatively negates the contention of the Petitioner. The relevant part of the said judgment reads as under: -

> "35. An analysis of the conditions prescribed in the TMA of registration would show that evidence, on the anvil of which adjudication, whether the conditions of registration having been satisfied or not depends, has be mostly documentary and appreciation thereof by the Registrar. I am unable to fathom any situation in which

the decision of the Registrar, whether conditions prescribed in the TMA for registration are satisfied or not, would depend on oral testimony and appreciation/evaluation thereof. It appears to be for this reason that the Legislature has provided for evidence to be taken by way of affidavit, for the limited nature of enquiry which the Registrar is required to conduct. Though the evidence would be documentary as aforesaid, but the said documents are required to be proved by affidavit, to bind the party producing the documents to genuineness and authenticity thereof.

36. The need to further empower the Registrar to, if he thinks fit, take oral evidence in lieu of or in addition to evidence by affidavit appears to have been felt to provide for the contingency, where a doubt having relevance to adjudication arises with respect to authenticity or genuineness of the document or on some other matter.

…….

41. There is another reason for which I am of the view that the power vested in the Registrar and IPAB to allow cross-examination in such matters is to be sparingly exercised. The enquiry before them, in the matter of grant/refusal of registration or cancellation of registration is more in the nature of formation of opinion (and which in turn is more in the nature of 'perception' on well defined parameters which have been developed over the years) on the basis of the trade mark and other documentary material on record. Even in actions for infringement and passing off where there clearly is a lis between adversaries, the evidence of witnesses generally plays a subordinate role in the court's final determination. For the test of 'deceptive similarity' the courts are never swayed by and do not surrender or yield to the testimony of witnesses and which are but an opinion. The testimonies of witnesses in such cases merely provide information which the courts use to form their own opinion. Supreme Court, in Mahendra & Mahendra Paper Mills Ltd. Vs. Mahindra & Mahindra Ltd. (2002) 2 SCC 147 followed by Division Bench of this Court in Larsen & Toubro Ltd. Vs. Lachmi Narain Trades (2008) 149 DLT 46 and by me recently in Staar Surgical Company Vs. Polymer Technologies International MANU/DE/2307/2016 (to dismiss a suit in limine) held that whether there is a likelihood of deception or confusion arising, is a matter for decision by the Court and no witness is entitled to say whether the mark is likely to deceive or cause

> confusion. This position which obtains in infringement/passing off proceedings, must equally apply to proceedings before Registrar/IPAB including in formation of opinion of 'descriptive', 'distinctive' and 'reputation'. The cross- examination of deponents of affidavit evidence thus does not serve much purpose in such proceedings.
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> 42. I add, affidavits can be evidence only of facts stated therein and which the deponent is competent to depose of and not of interferences drawn or opinions formed and expressed or submissions recorded/made therein – all such contents even if contained in affidavit evidence are to be disregarded and ignored, being inadmissible in evidence. Axiomatically, opportunity sought to cross-examine the deponent of the affidavit on such contents of affidavit which do not constitute evidence, is to be declined. Opportunities sought to cross-examine are mostly found to be falling in this category, not realising that by subjecting the deponent of affidavit evidence to cross-examination, opportunity to prove what was not proved in affidavit is being given. Opportunities sought to cross-examine deponent of affidavit evidence on the erroneous premise that all that is contained in affidavit is evidence which will be used against the party seeking to cross-examine have to be declined. Even Order XVIII Rule 4 introduced in CPC in the year 2002 permitting examination-in-chief to be by affidavit provides that the proof and admissibility of documents sought to be proved thereby "shall be subject to the orders of the court". It is thus not as if in the absence of cross-examination the entire affidavit will be read in evidence. Only that part of it which constitutes evidence for the subject matter of enquiry will be read as evidence."
>
> (Emphasis Supplied)

17. Though the aforesaid judgment was given in the context of Section 129 of the Act of 1999 which pertains to the powers of the Registrar and Section 92[7] which pertained to the powers of IPAB while adjudicating rectification petitions and appeal therefrom, this Court finds that the ratio laid down therein squarely governs the issue raised in the present petition,

where this Court is exercising jurisdiction under Section 57 of the Act of 1999. The nature of enquiry under Section 57, being one for cancellation or rectification of the register, is equally founded upon appreciation of documentary material and formation of opinion on statutory parameters such as distinctiveness, prior use and likelihood of confusion. The power to permit cross-examination in such proceedings cannot be treated as an unfettered or automatic right but remains discretionary and is to be exercised sparingly, only in cases where compelling reasons are demonstrated. In the absence of such exceptional circumstances, and particularly where the affidavit evidence does not disclose any factual foundation necessitating oral examination, a request for cross-examination would not merit acceptance.

18. This Court finds merit in the submission of the learned counsel for the Respondent No. 1 that the IPD Rules, which specifically govern the adjudication of cancellation petitions before this Court, prescribe a distinct and self-contained procedural framework under Rule 7 and Rule 7(viii) specifically. The said procedure contemplates adjudication primarily on the basis of pleadings and evidence affidavit, and does not envisage, as a matter of course, a substantive right of cross-examination to the opposite party. The said Rule is in conformity with the statutory intent of Act of 1999 as elucidated in the judgment of **The Financial Times** (supra).

19. The Petitioner has placed reliance on the judgment of the Supreme Court in **Bareily Electricity** (supra) to contend that the mere filing or exhibition of documents by a witness does not, by itself, amount to proof of the contents thereof.

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[7] Re: before repealed by the Tribunals Reforms Act, 2021.

20. In the present case, the proposed witness has exhibited documents bearing Nos. RW1/1, RW1/18, RW1/25, RW1/37, RW1/42 and RW1/44. However, a perusal of the application reveals that the Petitioner has failed to specifically identify authenticity of which of the said documents are disputed, or on what precise grounds their genuineness or contents are sought to be questioned. The Respondent No.1 has, on the other hand, contended that the documents in question are publicly available records. In the absence of any specific material casting doubt on the authenticity, relevance, or correctness of the documents, the application lacks any foundational basis for seeking cross-examination.

21. If the Petitioner intended to dispute authenticity of any of the exhibited documents, it was incumbent upon it to place on record cogent material or documentary evidence contradicting or impeaching the same. No such material has been produced. A bald assertion that documents require proof, without identifying any infirmity therein, cannot justify the invocation of request of cross-examination under the statutory framework of Act of 1999.

22. The Petitioner has neither pleaded nor demonstrated how the exhibited documents are inadmissible, unproved, or unreliable. In these circumstances, the reliance placed on **Bareilly Electricity** (supra) is misconceived and does not advance the Petitioner's case for seeking leave to cross-examine the witness. In the present case, as discussed hereinabove, the Petitioner has failed to lay any factual foundation warranting the exercise of discretion for permitting cross-examination of the witness. No specific infirmity in the affidavit evidence has been demonstrated, nor has any substantive ground been made out necessitating such a course.

23. Also, reliance placed by the Petitioner on Section 142 of BSA is equally misplaced in the facts of the present case. Section 142 merely enables cross-examination of a witness as to previous statements made by him in writing, where such statements are intended to be used for the purpose of contradiction. The said provision, however, presupposes the existence of a material inconsistency or contradiction in the statement of the witness, which requires to be put to the witness during cross-examination.

In the present case, the Petitioner has neither identified any specific statement in the affidavit of RW-1, which is sought to be contradicted, nor pointed out any prior statement or document allegedly inconsistent with the deposition of the witness. As already noted above, the affidavit of RW-1 is based entirely on official records of Respondent No.1 and the documents exhibited therein, and the Petitioner has failed to lay any factual foundation demonstrating contradiction, falsity, or inconsistency warranting recourse to Section 142 of BSA.

24. The reliance placed by the Petitioner on the judgment of the **Union of India v. T.R. Verma** (supra) is misplaced and inapplicable to the facts of the present case. The said decision was rendered in the context of a departmental enquiry, wherein witnesses were examined to adduce evidence against a charged officer, and the oral evidence adduced by the witnesses therein in such departmental enquiries are based on their personal knowledge, which requires cross-examination. It was in that specific factual and legal backdrop that the Court held that where a witness is examined in support of the charges, the delinquent officer must be afforded an opportunity to cross-examine such witness. The recognition of the right of cross-examination in this judgement must, therefore, be understood in the

context of disciplinary proceedings involving civil consequences to the charged officer.

In the present matter, which concerns a cancellation petition under the Act of 1999, the affidavit of Ms. Monique Cheng/RW-1 constitutes evidence led in support of the Respondent No.1's case. The deposition does not pertain to any allegation or adverse material against the Petitioner, nor does it introduce any evidence directly concerning the Petitioner. Consequently, the principles governing cross-examination in departmental enquiries have no application to the present proceedings under the Act of 1999.

25. This Court finds merit in the submission of the Respondent No.1 that in a cancellation petition filed by the Petitioner on the ground of non-use of the mark under Section 47 (1)(b) of the Act of 1999, the initial onus is on the Petitioner herein to show the non-use of the impugned mark and if the Petitioner succeeds in proving such non-use it is only thereafter the onus would shift on the Respondent No.1 to show the use.

26. Notwithstanding, if as per the Petitioner, the documents placed on record by the Respondent No.1 and exhibited by the witness/RW-1 fail to show any use of the mark in India, it is a contention which the Petitioner can always raise while addressing arguments during the final submissions and can be appreciated by the Court by perusing the Respondent's document. However, this cannot be a ground for seeking cross-examination of the witness.

27. Furthermore, the distinctiveness or any other issue of a trademark does not fall within the domain of a witness but is ultimately a matter for judicial determination by the Court. As elucidated by the Coordinate Bench

of this Court in **The Financial Times** (supra)[8], the assessment of issues such as distinctiveness, reputation, or likelihood of confusion is based on the Court's evaluation of the mark itself and the documentary material placed on record, and not on the opinion or testimony of a witness.

28. Insofar as the contention of the Petitioner founded on Rule 29 of the IPD Rules is concerned, the same cannot be accepted in view of the specific provision contained in Rule 7(viii) of the IPD Rules which expressly governs the question of recording oral evidence including cross-examination. The provision must be construed in consonance with the scheme of the Act of 1999, which, as recognised in **The Financial Times** (supra)[9], contemplates that proceedings relating to registration or rectification of trademarks are ordinarily to be decided on the basis of affidavit and documentary evidence, with oral examination being permitted only sparingly where circumstances so justify. In this statutory backdrop, Rule 7(viii) constitutes a specific procedural provision regulating cross-examination, and, therefore, the Petitioner cannot seek to invoke Rule 29, which is residuary in character and intended to operate only in situations where no specific procedural rule governs the matter. Accepting the Petitioner's contention would render the aforesaid Rule 7(viii) otiose and defeat the legislative intent of the Act of 1999.

29. Similarly, the reliance placed by the Petitioner on Order XIX Rule 2 of CPC, for seeking cross-examination is wholly misconceived in the facts of the present case. The proceedings in the present matter are governed by the IPD Rules, which constitute a special procedural framework for

[8] At paragraph no. 41.
[9] Refer paragraph nos. 26, 35, 40 and 41.

adjudication of intellectual property disputes before this Court. As recognised in **The Financial Times** (supra)[10], the statutory framework governing trademark registration and rectification proceedings consciously departs from the rigours of the CPC and contemplates a more flexible and summary procedure, primarily based on affidavit and documentary evidence. In this backdrop, Rule 7(viii) of the IPD Rules specifically regulates the recording of oral evidence and cross-examination, making it clear that such a course may be permitted only in exceptional circumstances and upon recording reasons. Once a specific rule governs the issue of cross-examination, recourse to the general provisions of the CPC, including Order XIX Rule 2, is unwarranted and impermissible.

30. Accordingly, this Court finds no merit in the application I.A. No. 2998/2025. The same is, therefore, dismissed.

No ground for Cross-examination in I.A. 2999/2025

31. The challenge to the registration of Respondent No. 1's mark bearing T.M. No. 2340887 in C.O. (COMM. IPD-TM) 86/2022 has been laid under Section 9(1)(a) of the Act of 1999, on the *ground* that the impugned mark is allegedly devoid of any distinctive character. It is a matter of record that impugned mark T.M. No. 2340887 was applied for on 'proposed to be used' basis. It is the contention of the Petitioner that the impugned mark could not have been registered on 'proposed to be used' basis without evidence of use in India due to its non-distinctive nature. Thus, the substantive challenge to the impugned registration is on the assertion that the impugned mark is not distinctive, as the Respondent has not asserted any user claim for the impugned mark before the Registrar.

[10] Refer paragraph nos. 26 and 35.

32. In this backdrop, the submission advanced on behalf of Respondent No. 1 that the issue of 'use' of the mark does not form the subject matter of the present petition is well-founded.

33. The limited question that arises for consideration before the Court, in the underlying petition, is whether the impugned mark possessed the requisite distinctiveness so as to justify its registration under the Act of 1999.

34. This Court has perused the affidavit evidence of Ms. Monique Cheng/RW-1. A plain reading thereof indicates that no deposition has been made by the witness addressing or substantiating the inherent distinctiveness of the impugned mark.

35. The entire premise in the aforementioned paragraph 7 of the application is based on cross-examining the witness on the assertion with respect to user however the use of mark is not a subject mark of this petition and therefore clearly the application is misconceived in the facts of this case.

36. There is therefore no factual basis for the petitioner seeking leave to cross examine the witness under Rule 7 (viii) of the IPD Rules, 2022.

37. Accordingly, I.A. No. 2999/2025 is dismissed as being devoid of merit.

C.O. (COMM.IPD-TM) 86/2022
C.O. (COMM.IPD-TM) 243/2022

38. List for directions, before the roster Bench on 16.03.2026.

MANMEET PRITAM SINGH ARORA, J

MARCH 10, 2026/MG/AM