

## **Legal Issues in ‘IP & Trademark Procedure’**

**Issue: Whether second appeal is maintainable against Trademarks Registry Orders?**

## Relevant Legal Provisions

### ❖ *Section 91 of the Trademarks Act, 1999 –*

*“Appeals to Appellate Board-(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 Appellate Board 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 subsection (1): Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.*

*(3) An appeal to the Appellate Board 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.”*

## Relevant Legal Provisions

### ❖ *Section 109 (5) of the Trade and Merchandise Marks Act, 1958–*

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

### ❖ *Section 76 of the Trademarks Act, 1940–*

*Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the 3[Federal government] from any decision of the Registrar under 4\*\* \* under this Act or the rules made there under to the High Court having jurisdiction. Provided that if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court, the appeal shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated.*

## Relevant Legal Provisions

### ❖ *Section 100, The Code of Civil Procedure, 1908*

*Second appeal.*-(1) *Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.*

### ❖ *Section 100A, The Code of Civil Procedure, 1908*

*100A. No further appeal in certain cases— Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order or such single Judge in such appeal or from any decree passed in such appeal.*

## Relevant Judicial Decisions

❖ *National Sewing Thread Co. Ltd. v. James Chandwick & Bros. Ltd, on 7 May, 1953 [AIR 1953 SC 357, The Supreme Court ]; Three-Judge Bench*

*“09...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...” (emphasis supplied)*



## Relevant Judicial Decisions

- ❖ *National Sewing Thread Co. Ltd. v. James Chandwick & Bros. Ltd, on 7 May, 1953 [AIR 1953 SC 357, The Supreme Court ]; Three-Judge Bench*

*“10...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.” (emphasis supplied)*

## Relevant Judicial Decisions

- ❖ ***Kamal Kumar Dutta & Anr. v. Ruby General Hospital Limited & Ors., on August 11, 2006 [(2006) 7 SCC 613, The Supreme Court]; Division Bench***

*“22. ...the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment, either expressly or by necessary intendment. Parliament while amending Section 100-A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1-7-2002, 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.”.*

*“23. The present order which has been passed by CLB and against that an appeal has been provided before the High Court under Section 10-F of the Act, that is, an appeal from the original order. Then in that case no further letters patent appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where the learned Single Judge hears an appeal from the original order .... It may not be a court but it has all the trapping of a court. Therefore, CLB while exercising its original jurisdiction under Sections 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 thereafter no further appeal could be filed.” (emphasis supplied)*

## Relevant Judicial Decisions

❖ *Promoshirt SM SA v Armassuisse, on September 06, 2023 [2023 SCC OnLine Del 5531 , Delhi High Court]; Division Bench*

*“31...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...”*

*“73...we find that when Section 100-A of the Code speaks of an original or appellate decree or order, it has to necessarily be understood in light of Section 2(14) of the Code which in unambiguous terms defines it to mean an order other than a decree, which amounts to a formal expression of a decision of a civil court.”*

*“74...Section 100-A of the Code would bar the Letters Patent remedy have thus all come to be rendered either in respect of proceedings emanating from the Code, or proceedings where a civil court may have been the conferred authority under a special enactment and thus clearly stand on a distinct footing...”  
(emphasis supplied)*



## Relevant Judicial Decisions

- ❖ *Promoshirt SM SA v Armassuisse, on September 06, 2023 [2023 SCC OnLine Del 5531 , Delhi High Court]; Division Bench*

*“75...we find that undisputedly, the Registrar of Trade Marks is not a civil court. Even though some of the powers that are otherwise available with a civil court may be placed in its hands and be exercised by it, the same would not make it a civil court. We have no hesitation in holding that it would not qualify the test of “trappings of a court” in light of the decisions in Anglo-French Drug Co. and Khoday Distilleries. Section 91 of the 1999 TM Act does not prescribe the appellate remedy to be governed by the provisions of the Code. This as we have found above is a departure from Section 76 of the 1940 TM Act and Section 109 of the 1958 TM .... All of the above would tend to indicate that the LPA against an order passed by a Single Judge while exercising the Section 91 power would not be barred.”*

*“78...We would think that the intent of Section 100A 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. We further note that Section 2(14) uses the expression “civil court” and not “court”. (emphasis supplied)*

## Relevant Judicial Decisions

❖ ***Promoshirt SM SA v Armassuisse, on September 06, 2023 [2023 SCC OnLine Del 5531 , Delhi High Court]; Division Bench***

*... It would thus be doubtful whether the “trappings of a court” test as generally formulated would have any application. 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. “*

*“79 ...In addition to the above, the LPA remedy would also not be available where the special statute subjects the appeal remedy to follow the rules applicable to appeals and embodied in the Code. Once the appeal is made subject to the rules incorporated in the Code, all restrictions to an appeal including Section 100A would get attracted and attached. This since the appeal provision in such a case would be deemed to have consciously adopted all restrictions as put in place under the Code and would override the letters patent provision.”*

*“80...In the absence of any such provision either regulating or restricting the right of appeal in Section 91 of the 1999 TM Act, the LPA remedy would not be barred by Section 100A of the Code and would be applicable..” (emphasis supplied)*

## Relevant Judicial Decisions

- ❖ *Glorious Investment Limited v Dunlop International Limited & Anr., on November 04, 2025*  
*[TEMPAPO – IPD 5 of 2025, Calcutta High Court]; Division Bench*

*“17... 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...”*

*“21... Notably, the provision of Section 10F too, in a manner similar to the provision of Section 76 of the 1940 Act, only “confers a right of appeal to the High Court and says nothing more about it.”*

*“23...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...” (emphasis supplied)*

## Relevant Judicial Decisions

- ❖ *Glorious Investment Limited v Dunlop International Limited & Anr., on November 04, 2025*  
*[TEMPAPO – IPD 5 of 2025, Calcutta High Court]; Division Bench*

*“28... 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...”*

*“31... We therefore find that the Registrar has the trappings of a Court and that being so the ratio of Kamal Kumar Dutta (supra) can be effectively applied to the facts of the present case as well thereby ousting any avenue for a Letters Patent appeal against an order passed under Section 91 of the 1999 Act. ..” (emphasis supplied)*



## Relevant Judicial Decisions

*“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.” (emphasis supplied)*



## Conclusion

- ❖ Relevance of the “trappings of a court” test is questionable; the Calcutta High Court did not distinguish properly between a “court” and a “civil court.” The Companies Act, 1956 (unlike the TM Act, 1999) contained an explicit deeming clause under Section 10E(4D), which deemed the CLB to be a civil court.
- ❖ Letters Patent Appeals (LPAs) serve as a practical mechanism to challenge unfair or arbitrary decisions by a Single Judge. Completely barring LPAs forces parties to approach the Supreme Court (Article 136), which is costly, slow, and difficult.

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- ❖ There is a need for Supreme Court intervention to clarify this issue of Section 100A bars second appeals in trademark cases and provide clear guidelines. The present reasoning could be extended to other authorities, such as the Registrar under the GI Act.

**THANK YOU!**

**Questions?**

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