



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

% Judgment delivered on: 28/02/2026

+ **W.P.(C)-IPD 66/2021 & CM APPL. 3710/2017**

RAKESH KUMAR AGGARWALPetitioner

Versus

**INTELLECTUAL PROPERTY APPELLATE BOARD
AND ANR**Respondents

AND

+ **W.P.(C)-IPD 69/2021 & CM APPL. 3712/2017**

RAKESH KUMAR AGGARWALPetitioner

Versus

**INTELLECTUAL PROPERTY APPELLATE BOARD
AND ANR**Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Varun Dhingra & Ms. Khushi Gupta, Advocates.

For the Respondents : Mr. Amit Jain & Mr. Bhavesh, Advocates for Respondent No.2.

JUDGMENT

TEJAS KARIA, J

INTRODUCTION:

1. The present Petitions have been filed challenging the order dated 10.05.2016 (“**Impugned Order**”) passed by the Registrar of Trade Marks (“**Registrar**”) in Rectification Application bearing No. ORA/30/2013/TM/DEL filed by Respondent No. 2 in in W.P.(C)-IPD 66/2021 and Rectification Application bearing No. ORA/31/2013/TM/DEL



filed by Respondent No. 2 in W.P.(C)-IPD 69/2021 for rectification / cancellation of the Mark 'THUKRAL' adopted by the Petitioner in respect of brooms of all types included in Class 21 under Registration No. 1223066 from the Trade Marks Register ("**Rectification Applications**").

SUBMISSIONS ON BEHALF OF THE PETITIONER:

2. The learned Counsel for the Petitioner made the following submissions:

- 2.1 The Petitioner has been trading as Agarwal Enterprises, Ganesh Ganj Kila, Bareilly, Uttar Pradesh, being sole proprietor thereof, and a manufacturer, trader and merchant of all types brooms, included in Class 21. The Petitioner has been carrying on his business since 1995 using several trade marks including the Mark 'THUKRAL' in respect of the aforesaid goods registered under registration certificate No. 1223066 dated 14.08.2003 in respect of brooms of all types included in Class 21.
- 2.2 The Petitioner has given wide publicity to the Mark 'THUKRAL'. On account of superior quality of brooms and due to continuous use of the Mark 'THUKRAL' for more than 17 years, the Petitioner's Mark 'THUKRAL' has acquired reputation and goodwill in public and trade and the goods under the Mark 'THUKRAL' connote and denote the goods and merchandise of the Petitioner and none else.
- 2.3 Respondent No. 2 has recently started the manufacturing and marketing of brooms under the name 'THUKRAL' and has copied the Mark 'THUKRAL' in respect of the goods namely brooms. The Petitioner has been using the Mark 'THUKRAL' since 1995 while Respondent No. 2 has allegedly started using the Mark



‘THUKRAL’ recently. The Petitioner is the prior user of the Mark ‘THUKRAL’ and therefore, Respondent No. 2 must be restrained from using the Mark ‘THUKRAL’. Also, the invoices placed on record by Respondent No. 2 clearly demonstrate that the firm name adopted and used by Respondent No. 2 is ‘THAKRAL’ and not ‘THUKRAL’.

- 2.4 Respondent No. 2 is not the sole user of the Mark ‘THUKRAL’. The name of ‘THUKRAL’ is not sole property of Respondent No. 2. There is no restriction to adopt the name ‘THUKRAL’ by anyone. The Petitioner uses the name ‘THUKRAL’ as brand name and applied for its registration as a trade mark in 2003. It is Respondent No. 2’s claim that the Mark ‘THUKRAL’ was used before 1996 by Respondent No. 2’s predecessor. However, the firm M/s Thakral Stores of Respondent No. 2 has not claimed the Mark ‘THUKRAL’ in the survivorship and thus, the business of the firm M/s Thakral Stores never extended under the Mark ‘THUKRAL’.
- 2.5 Respondent No. 2 is well aware of the Petitioner’s Mark ‘THUKRAL’ and copyright existing therein and has deliberately with a dishonest and *mala fide* intention adopted the Petitioner’s Mark ‘THUKRAL’ only to trade upon the Petitioner’s reputation and to earn easy profits in an illegal manner for which Respondent No. 2 is not entitled.
- 2.6 The Petitioner’s Mark ‘THUKRAL’ and Respondent No. 2’s Mark ‘THUKRAL’ and the artistic work therein are identical. The Petitioner is much prior in use of the Mark ‘THUKRAL’. Respondent No. 2 cannot be the proprietor / owner / originator of



the artistic work in the Mark 'THUKRAL' since it is deceptively similar to the Mark 'THUKRAL' of the Petitioner.

- 2.7 Respondent No. 2 applied for registration of the Mark 'THUKRAL' on 01.06.2012 after the application of the Petitioner and further submitted that Respondent No. 2 was using the Mark 'THUKRAL' since 1983 and yet till then did not apply for registration of the Mark 'THUKRAL'. Respondent No. 2 failed to show any document to prove that Respondent No. 2 was using the Mark 'THUKRAL' since 1983. As per the invoices of Respondent No. 2, the firm name of Respondent No. 2 is 'Thukral Sons' and not 'THUKRAL'. As per the other bill filed by Respondent No. 2, the brand names mentioned on it are 'TAJ BRAND', 'SUN BRAND', 'T.S. TRADEMARK', and 'TB', instead of 'THUKRAL'.
- 2.8 Respondent No. 2 filed the logo as well as calendar to show use of the Mark 'THUKRAL' having no evidentiary value as all the said documents are forged and manipulated by Respondent No. 2. Respondent No. 2 has also placed on record three bills, namely bill No. 726 dated 20.04.1989, bill No. 797 dated 13.06.1989 and bill No. 727 dated 21.11.1989. It is evident that these bills are forged and manipulated, as bill No. 727 is shown to have been issued in November 1989, whereas bill No. 797 had already been issued on 13.06.1989. On various invoices filed by Respondent No. 2, the bill date is not mentioned. Respondent No. 2 has also filed documents relating to assessment of Sales Tax, Income Tax, and copies of bank passbooks, which do not show that Respondent No. 2 is using



the Mark 'THUKRAL'. Therefore, the documents filed by Respondent No. 2 are not reliable.

- 2.9 On enquiries, it was also revealed to the Petitioner that Respondent No. 2 has filed an application bearing No. 2341405 dated 01.06.2012 to register the Mark 'THUKRAL' in his name.
- 2.10 The Petitioner thereafter had also issued a notice dated 27.11.2012 to Respondent No. 2, *inter alia*, calling upon Respondent No. 2 to desist forthwith from using the Mark 'THUKRAL' or any other mark which is identical and / or deceptively similar and / or likely to be confused with the Petitioner's Mark 'THUKRAL'; to withdraw the application bearing No. 2341405 dated 01.06.2012; and to furnish an undertaking in the draft to be approved by the Petitioner that Respondent No. 2 will henceforth not use and / or adopt any mark identical and / or deceptively similar to the Petitioner's Mark 'THUKRAL' with a liberty to publish the same in two dailies at his cost within seven days from the receipt of the notice dated 27.11.2012, which was duly served upon Respondent No. 2. However, despite receipt of the notice dated 27.11.2012, Respondent No. 2 did not comply with the same.
- 2.11 The Impugned Order is liable to be set aside on the ground that Respondent No. 1 while passing the Impugned Order has failed to consider the real facts of the present case wherein Respondent No. 2 had failed to show any bill prior to 2007 confirming that Respondent No. 2 was not using the Mark 'THUKRAL' prior to the year 2007.



- 2.12 The registration of the Mark ‘THUKRAL’ is not against Section 9 or 11 of the Trade Marks Act, 1999 (“**Act**”). Respondent No. 2 filed the Rectification Applications after receiving the notice in the suit bearing No. CS 231/12 titled as *Rakesh Kumar Vs. Sh. Kishan Lal Thukral* filed by the Petitioner against Respondent No. 2 before the court of Additional District Judge, Tis Hazari Courts, Delhi (“**Suit**”), and that this fact which was concealed by Respondent No. 2 in the Rectification Applications.
- 2.13 Respondent No. 2 had filed the Rectification Applications firstly before the Intellectual Property Appellate Board Chennai (“**Chennai Board**”) and thereafter, the Rectification Applications were transferred to Respondent No. 1. It was only on 21.01.2016 when the counsel for the Petitioner appeared before Respondent No. 1, that it was transpired that the Counter Statement in the Rectification Application (“**Counter Statement**”) was not filed by previous counsel of the Petitioner. Thereafter, Respondent No. 1 heard the arguments of counsel of Respondent No. 2 and the Rectification Applications were reserved for orders, whereupon Respondent No. 1 passed the Impugned Order without giving any intimation to the Petitioner or his counsel.
- 2.14 The Petitioner engaged the previous counsel namely Shri M. Madhu Prakash and also paid the legal fees to him, but he did not file the Counter Statement before the Chennai Board and always on the asking assured the Petitioner that he has already filed the Counter Statement. Respondent No. 1 failed to consider that the Petitioner should not suffer for the fault of his previous counsel.



The counsel for the Petitioner also filed the additional affidavit along with the additional grounds before Respondent No. 1 but the counsel for the Petitioner was not heard by Respondent No. 1.

2.15 The Impugned Order is thus illegal, arbitrary and based on false and baseless assumption adopted by Respondent No. 1, despite the fact that Respondent No. 2 did not adopt the Mark 'THUKRAL' and are not the prior users of the Mark 'THUKRAL' and Respondent No. 1 has wrongly considered the documents filed by Respondent No. 2.

2.16 Therefore, this Court may set aside the Impugned Order and direct the Registrar to change the status of the Mark 'THUKRAL' to its previous form, i.e. 'Registered'.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2:

3. The learned Counsel for Respondent No. 2 made the following submissions:

3.1 Respondent No. 2 has been carrying on business of manufacturing and marketing of brooms, dusters and other cognate and allied goods. In the year 1957, Shri Krishan Lal Thukral and Late Shri Darshan Lal Thukral formed a firm M/s Thukral Stores at Lahori Gate, Delhi. The firm simultaneously adopted the Mark 'THUKRAL' for the goods brooms, dusters etc. The firm did extensive business under the Mark 'THUKRAL'. The firm M/s Thukral Stores was dissolved in 1983 with the understanding that both of its partners will use the trade name and / or Mark 'THUKRAL'. In the year 1983, Shri Krishan Lal Thukral opened a firm M/s KAMAL STORE having office at Lahori Gate, Naya Bazar, Delhi and started using the Mark 'THUKRAL' for the goods



brooms, dusters, etc. In the year 1983, Shri Darshan Lal Thukral opened two firms - Darshan Lal Thukral & Sons and Thukral Sons. Shri Darshan Lal Thukral died in 1999. His son Shri Harsh Thukral is now the sole proprietor of the firm Thukral Sons and is using the Mark 'THUKRAL' for the goods brooms, dusters etc. The Mark 'THUKRAL' denotes and connotes the goods of Respondent No. 2.

- 3.2 The Petitioner has made a false averment in the Petitions that his previous counsel assured him that the Counter statement has been filed. As per the format of a counter statement namely Form 1- Form of counter-statement provided under Rule 10 (1) / 23(3) of the Intellectual Property Appellate Board Rules, 2003, a counter statement cannot be filed by an Advocate independently but requires verification by the client. Moreover, a counter statement is to be accompanied with the fees of Rs. 200/- which is to be paid by Demand Draft only. Naturally, the Petitioner would have made the Demand Draft of Rs. 200/- in both the cases. If the Counter Statement was filed, the Petitioner would have signed the Counter Statement. No such averments of any kind has been made in the Petitions.
- 3.3 Also, if the Counter Statement had been prepared, the Petitioner would have retained the copy and produced the same. However, the Petitioner never signed or verified the Counter Statement and has made a false allegation against its previous counsel before the Chennai Board.
- 3.4 The orders of the Chennai Board also mention that the Petitioner had a non-caring attitude. The order file in the Rectification



Applications suggests that the Petitioner conducted the proceedings before the Chennai Board in a casual manner. The Petitioner also disobeyed the directions given by the Chennai Board from time to time in the proceedings in the Rectification Applications. The Chennai Board issued Form C on 21.02.2013. The Petitioner being the respondent in the Rectification Applications was under an obligation to file Counter Statement within two months of the receipt of the Form C and copy of the Rectification Applications i.e., till 21.04.2013. In the alternative, the Petitioner also could have sought extension of time for filing the Counter Statement by filing an appropriate request in Form 3 under Rule 14 of the Intellectual Property Appellate Board (Procedure) Rules, 2003 (“**Rules**”).

3.5 The following orders were passed by the Chennai Board in the Rectification Applications:

Order dated 24.11.2014:

“Learned counsel for the applicant Mr. Amit Jain is present before us today. The first respondent was already served notice. But today, neither the first respondent nor his representative present. The applicant has filed Miscellaneous Petitions seeking for relief of fixing an early date of hearing particular in respect of stay application. Considering the submission of the learned counsel for the petitioner and also considering the relief sought for stay of operation of the impugned trade mark, we are inclined to give early date of hearing for stay application. Accordingly, call both the matters on 21st January 2015. Registry shall send notice to the parties.”

Order dated 21.01.2015:

“Mr. Ankit Bansal, in-turn and the representative of the counsel on record for the respondents, on request and instructions, seeks adjournment due to personal inconvenience of the learned counsel on record, in respect of both the matters.



2. Mr. Shailen Bhatia, the learned counsel for the applicants appearing for both the matters strongly object the prayer submitting that there is some urgency in the matter as a suit was filed by the respondents before the Hon'ble District Court. In view of the above, we direct the respondents that they shall undertake not to pursue the said suit proceedings till the disposal of these applications. Considering the said urgency we are inclined to call both the matters February 2015. It is made clear that there will not be any adjournment in respect of the impleaded prayer made by the learned counsel for the applicants.”

3.6 Thereafter, the Chennai Board passed the following order in the Rectification Applications:

Order dated 17.02.2015

“Mr. Shailen Bhatia, the learned counsel for the applicants and Mr. Ankit Bansal, representative appearing on behalf of the counsel for the respondent. The respondent seeking for the relief of adjournment. It is pertinent to note that the respondent is always represented by representative and not even a counsel. It is seen that though the respondent seeking adjournment and he has not filed any Form-5 before this Bench. His practice is to be discouraged. It is seen that the have know the procedure to file the application seeking for the relief of permission to file an additional grounds but the respondent failed to file Form-5. The fact remains that they have informed the party during the last hearing on 21.01.2015 that no more adjournment would be granted. However, considering the respondent is not represented by any counsel, we are inclined to grant relief of adjournment as last chance by imposing cost of Rs. 5000 to the applicant with a period of two weeks, Accordingly, the matter is adjourned to the next date of hearing on 12.05.2015.”

The aforesaid order shows that in 2015, the Petitioner was informed by the Chennai Board that no more adjournment will be granted and costs were imposed on the Petitioner.

3.7 Thereafter, Respondent No. 1 further passed the following orders in the Rectification Applications:



Order dated 18.11.2015

“Mr. Shailen Bhatia, the learned counsel for the applicant is present today in both these matters. It is seen that from the records that the respondent was called absent on 24.11.2014 and 21.01.2015 Mr. Ankit Bansal who has not a counsel only intern appeared representing the learned counsel on record and sought adjournment on personal inconvenience. Again on 17.02.2015 the same intern representing the learned counsel on record appeared and sought for adjournment. We have granted the relief by imposing a cost of Rs. 5000 to be paid to the applicant within a period of two weeks. Today Mr. Rupin Singh, the learned counsel appearing without filing any Vakalath and he would submit that he is not able to get NOC from erstwhile counsel. Therefore, the fact remains, the respondent is continuously not appearing either in person or through any advocate and in these matters even counter is yet to be filed. Added to the above said fact, it is also submitted before us by the learned counsel for the applicant that even the cost imposed of Rs. 5000/- by us is yet to be paid to the applicant. Considering all these factors, we are constrained to impose additional cost of Rs. 10,000/- to the respondent and it is made clear the respondent to be paid cost of Rs. 15000/- in total within a period of two weeks from today to the applicant. It is further made clear that we are not inclined to grant any further adjournment except granting the relief of adjournment today as a last chance. Accordingly, call both the matter on 21/01/2016. The Registry is directed to issue notice to both the parties along with the copy of the order.”

Order dated 21.01.2016

“Mr. Shailen Bhatia, the learned counsel for the applicants and Mr. Varun Dhingra, the learned counsel for the respondents in both the cases are present today.

2. Mr. Shailen Bhatia, the learned counsel for the applicants would submit that the cost imposed by this Bench by the order dated 18/11/2015 as well as imposed in the earlier order dated 17/02/2015 totaling to Rs. 15,000/- is not yet paid. It is pertinent to note that only today the learned-counsel for the respondent. Mr. Varun Dhingra appearing for the respondent filed no objection letter from the erstwhile counsel for the respondent. Though it is submitted by the learned counsel for



the respondent that counter already filed before the Chennai Registry of IPAB but our records reveal that there is no such counter has been filed by the respondent till date and the applicant also not served with any copy of the counter statement. Considering all these factors, the respondent can put forward his contention only after paying the cost imposed by us. It is made very clear that the question of granting further extension for filing counter statement not at all arises in view of the continues conduct of the respondent, ignoring, neglecting and disobeying the orders of this Board.

3.. It is pertinent to note that this Bench has shown so much indulgence in granting the relief of extension of time for filing counter statement for three times and lastly time extended upto 17/08/2013 as per order dated 11/09/2013 and thereafter the respondent is not bothered to file any petition for further extension of time. Such being the position, we are left with no other alternative but to deny the right of the respondent herein to file counter statement. As a result we have to proceed with the matter on merits. Heard the arguments of the learned counsel for the applicants and he undertakes to file the written submissions.”

Order dated 23.03.2016

“In these matters we have heard the arguments of Mr. Shailen Bhatia, the learned counsel for Applicant on 21.01.2016 at New Delhi Circuit Bench Sitting. For clarification of certain points post the matter for further hearing after issuing notice to the Applicant’s Counsel.”

- 3.8 The orders dated 24.11.2014, 21.01.2015, 17.02.2015, 18.11.2015, 21.01.2016, 23.03.2016 passed by the Chennai Board and Respondent No. 1 have been concealed by the Petitioner in the present Petitions. In the order dated 21.01.2016, Respondent No. 1 specifically observed that ‘records reveal that there is no such counter has been filed by the respondent till date and the applicant also not served with any copy of the counter statement’. The entire conduct of the Petitioner before the Chennai Board and Respondent



No. 1 ought to have been placed before this Court by the Petitioner. Thus, it is evident that the present Petitions are based on falsehood and that the Petitioner has no case.

3.9 The submission made by the learned Counsel for the Petitioner that the counsel for the Petitioner filed the additional affidavit before Respondent No. 1 is also wrong. No such additional affidavit was filed by the Petitioner before Respondent No. 1. The first and foremost thing that was required to be filed was the Counter Statement which the Petitioner did not file and further never sought any extension to file the Counter Statement from 2013 to 2016. The Petitioner by deliberately not filing the Counter Statement cannot have any reason to complain.

3.10 As per the settled law, a trade mark registration has to be kept alive by user. Therefore, the Petitioner cannot presume the validity of the registration of the Mark 'THUKRAL' for perpetuity. The Supreme Court in ***Yishudas Trading vs. Vazier Sultan Tobacco Co. Ltd., Hyderabad and Another***, AIR 1996 SC 2275 has observed that:

"45. ... Looking to the Scheme of the registration of trade mark as envisaged in the Trade Marks Act and the Rules framed thereunder, it appears to us that registration of a trade mark cannot be held to be absolute, perpetual and invariable under all circumstances..."

3.11 The Petitioner's full name is Rakesh Kumar Aggarwal. The Petitioner sought registration of the caste / surname 'THUKRAL' for goods namely brooms. Respondent No. 2 in both the Petitions are closely related to each other and have surname Thukral and are using their surname as Trade Mark.



3.12 The Petitioner deliberately adopted the surname of Respondent No. 2 and sought registration of the Mark ‘THUKRAL’. The Petitioner has not been able to provide any explanation for the adoption of the surname Thukral before any forum. A bare perusal of the orders passed in the Suit also shows that the Petitioner failed to lead evidence in the Suit and after several opportunities, the right of the Petitioner to file plaintiff’s evidence in the Suit was closed. It is a matter of record that the Petitioner did not file a single document showing its alleged user in the Suit. The Petitioner has no explanation in respect of alleged adoption of the Mark ‘THUKRAL’ since he is Aggarwal by caste. The Petitioner has also not filed any document to substantiate his alleged claim of user for the Mark ‘THUKRAL’ from the year 1996. Section 47 of the Act also provides for removal of a mark from register and imposition of limitations on ground of non-use.

3.13 Reliance was placed on ***Indo-Pharma Pharmaceutical Works Pvt. Ltd. vs. Farbenfabriken Bayer Aktiengesellschaft***, 1976 ILR 1972 BOM, wherein it was held that:

“What is meant by fraud in the context of Section 32(a) has not been precisely defined. It might be a fraud for a person to procure registration of a trade mark of which he knows he is not entitled to claim the exclusive use, for instance, if he knows that it is in use by another trader. If an applicant is aware that there is another party who ought to be registered, the assertion may be regarded as a deliberate attempt to deceive the Registrar which would amount to fraud such as to prevent registration in Part A from becoming conclusive after seven years.”



3.14 Therefore, the Petitioner has failed to point out any error in the reasoning of the Impugned Order and thus, the present Petitions merit dismissal with costs.

ANALYSIS AND FINDINGS:

4. At the outset, it is necessary to reiterate the limited scope of interference in exercise of writ jurisdiction. This Court while exercising writ jurisdiction under Article 226 of the Constitution of India (“**Constitution**”) does not sit as an appellate forum over the findings of a specialised tribunal. Interference in the present case is warranted only if the Impugned Order suffers from perversity, violation of principles of natural justice, or is unsupported by any material and a mere re-appreciation of evidence is impermissible.

5. Prior to examining the merits of the present case, it would be appropriate to consider whether the Petitioner was granted sufficient opportunity to file the Counter Statement and present his defense in the Rectification Applications.

6. The procedure under Rule 10(1) of the Rules (“**Rule 10**”) provides that:

“10. Filing of counter statement to the application or appeal and other documents by the respondent. –

(1) After receipt of the application or appeal filed in the prescribed Form 1, 2, or 3 of the Trade Marks (Applications and appeals to the Intellectual Property Appellate Board) Rules, 2003, the respondent may file three complete sets of counter statement in the prescribed Form 1 under these rules containing the reply to the application or appeal along with documents including evidences in the form of affidavits, if any, in paper-book form before the Registry within two months of the service of the notice on him of the filing of the application or appeal. A copy of the counter statement shall be



served to the applicant or appellant by the respondent directly under intimation to the Registry...”

7. As per the procedure provided under Rule 10, a respondent, is required to file a counter statement containing the reply to the application within two months of the service of the notice on him of the filing of the application. The order dated 24.11.2014 passed by the Chennai Board records that *‘The first respondent was already served, notice. But today, neither the first respondent nor his representative present.’* Thereafter, on 21.01.2015 and 17.02.2015, adjournments were sought on behalf of the Petitioner in the Rectification Applications. As regards the filing of the additional affidavit containing additional grounds, the order dated 17.02.2015 passed by the Chennai Board records that *‘It is seen that the have know the procedure to file the application seeking for the relief of permission to file an additional grounds but the respondent failed to file Form-5.’* The order dated 18.11.2015 passed by the Chennai Board further records that *‘Therefore, the fact remains, the respondent is continuously not appearing either in person or through any advocate and in these matters even counter is yet to be filed.’*

8. Therefore, the orders passed by the Chennai Board shows that despite service of notice and repeated opportunities, the Petitioner failed to comply with the requirement under Rule 10 of filing the Counter Statement within two months of the service of the notice of the Rectification Application. The order dated 18.11.2015 passed by the Chennai Board records that no Counter Statement had been filed as on 18.11.2015. The order dated 21.01.2016 passed by Respondent No. 1 also records that no Counter Statement had been filed till that date and that repeated indulgence had already been granted, showing the failure of the Petitioner to avail of opportunities granted to file



the Counter Statement in the Rectification Applications thereby justifying the denial of the Petitioner's right to file the Counter Statement and the decision taken by Respondent No. 1 to proceed on merits.

9. The explanation now offered by the Petitioner that the previous counsel failed to file the Counter Statement is a bare assertion. No material is placed on record to show that the Counter Statement was ever prepared, verified, signed, or tendered. No copy of the verified and signed Counter Statement has been produced by the Petitioner in the present Petitions to support the explanation offered that the previous counsel failed to file the Counter Statement after the Counter Statement was verified and signed by the Petitioner.

10. The chronology of orders passed by the Chennai Board and Respondent No. 1 placed on record further shows a consistent pattern of non-appearance, adjournment requests through representatives, non-compliance with costs imposed, and failure to seek extension to file the Counter Statement in the manner prescribed by law. Respondent No. 1 *vide* order dated 21.01.2016 has also recorded that '*this Bench has shown so much indulgence in granting the relief of extension of time for filing counter statement for three times and lastly time extended upto 17/08/2013 as per order dated 11/09/2013 and thereafter the respondent is not bothered to file any petition for further extension of time.*' In these circumstances, denial of further opportunity to the Petitioner to file the Counter Statement to the Rectification Applications cannot be termed arbitrary or violative of natural justice.



11. On merits, Respondent No. 1 recorded the following findings in the Impugned Order:

- (i) The Mark 'THUKRAL' was adopted by the family of Respondent No. 2 since 1954;
- (ii) Respondent No. 2 before Respondent No. 1 had established prior user; and
- (iii) The Petitioner had not substantiated its own claim of user.

12. As regards the submission made by the Petitioner on the distinction between 'Thakral' and 'THUKRAL', Respondent No. 2 has submitted that the variation is merely a matter of transliteration of the same surname in Hindi and English. It has further been submitted by Respondent No. 2 that the proprietorship in the Mark 'THUKRAL' and its use in relation to the business of brooms and allied goods traces back to the family concerns since 1954. Respondent No. 1 has taken note of this explanation in the Impugned Order. Significantly, apart from drawing attention to the variation in spelling of 'Thakral' and 'THUKRAL', the Petitioner has not placed any material to show that the Impugned Order is vitiated by any infirmity warranting interference under Article 226 of the Constitution.

13. It is a settled law that the scheme of the Act is such where rights of prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb / interfere with the rights of prior user. Section 34 of the Act provides that nothing in this Act shall entitle the registered proprietor or registered user to interfere with the rights of prior user. Conjoint reading of Sections 34, 27 and 28 of the Act shows that the rights of registration are subject to Section 34 which can be seen from the



opening words of Section 28 of the Act which states '*Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor....*' and also the opening words of Section 34 which states '*Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere....*' Thus, the statutory scheme recognises removal on grounds of prior user and that registration is not absolute or perpetual and remains subject to statutory conditions.

14. Respondent No. 1 in the Impugned Order has also recorded a finding regarding non-use of the Mark 'THUKRAL' by the Petitioner post registration on 14.08.2003. Under Section 47 of the Act, a registered mark is liable to be removed if it is shown that there has been no *bona fide* use for the statutory period. The finding returned by Respondent No. 1 is based on the material placed on record in the Rectification Applications and the absence of any rebuttal from the Petitioner, who failed to file a Counter Statement to the Rectification Applications.

15. As regards the adoption of the Mark 'THUKRAL', the Petitioner offered no explanation as to why the Mark 'THUKRAL' was adopted by the Petitioner in the year 1995. Respondent No. 1 has recorded a finding that Respondent No. 2 and their family were using the Mark 'THUKRAL' in relation to goods identical to that of the Petitioner since 1954. In these circumstances, and in the absence of any explanation for adoption of the Mark 'THUKRAL', Respondent No. 1 was justified in examining the issue of *bona fides* of the Petitioner and render a finding that the adoption of the Mark 'THUKRAL' by the Petitioner is *mala fide* and dishonest and that the claim of user by the Petitioner is tainted and the registration obtained by the



Petitioner '*is fraud by misrepresenting to the Registrar with the full knowledge that the representation was false*'.

16. The Rectification Applications were thus allowed on the grounds of prior user, non-use of the Mark 'THUKRAL' by the Petitioner from the date of grant of registration certificate on 14.08.2003, non-rebuttal of Respondent No. 2's submissions before Respondent No. 1, and the finding of dishonest adoption. These are findings of fact within the domain of Respondent No. 1 based on the documents submitted along with the Rectification Applications and pleadings filed by Respondent No. 2 before Respondent No. 1.

17. The Petitioner has also submitted before this Court that Respondent No. 1 did not consider factual aspects regarding certain invoices and alleged inconsistencies therein. However, in the absence of a Counter Statement, despite repeated opportunities granted to the Petitioner to file the same, Respondent No. 1 cannot be faulted for proceeding on the unrebutted documents and pleadings on record. A party that deliberately chooses not to contest at the appropriate stage cannot subsequently complain of non-consideration.

18. It is a settled law that a writ jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse, and that unless there is any grave miscarriage of justice or flagrant violation of law calling for intervention it is not for the High Court under Articles 226 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not



misdirected itself either on law or on fact, then in exercise of the power under Article 226 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.

19. In the present case, the Impugned Order refers to the pleadings and documents placed on record. The conclusions arrived at by Respondent No. 1 are evidently not arbitrary. The Impugned Order does not disclose any jurisdictional error, procedural impropriety, or perversity warranting interference under Article 226 of the Constitution.

20. The Petitioner had ample opportunities to file the Counter Statement. These opportunities were not utilized responsibly. The writ jurisdiction under Article 226 of the Constitution cannot be invoked to remedy consequences arising from a party's own procedural default. In the facts and circumstances of the present case, reopening the controversy between the Parties would defeat procedural discipline and undermine finality in proceedings concluded before Respondent No. 1 attained after due appreciation of the material placed on record and in adherence to the principles of natural justice.

21. In view of the above, there is no ground to interfere with the Impugned Order dated 10.05.2016 passed by Respondent No. 1. As a result the present Petitions are hereby dismissed. Pending applications, if any, stand disposed of. There shall be no order as to costs.

TEJAS KARIA, J

FEBRUARY 28, 2026

'HK'