

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**H.C.A. No.211 of 2016**

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Date	Order with signature of Judge
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Hearing / Priority Case:

1. For hearing of Main Case.
  2. For hearing of CMA No.2649/2016.
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**15<sup>th</sup> May, 2018**

Mr. Ali Asghar Buriro, Advocate for Appellant.

Mr. Muhammad Jaffer Raza, Advocate for Respondent No.1.

None present for the respondents No.2 and 3.

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Through this High Court Appeal, the appellant has challenged the order dated 27.07.2016 passed by the learned Single Judge of this Court on CMA No.6507/2016 filed in Suit No.131 of 2016. In fact, this application was moved under section 47 of the Trademarks Ordinance, 2001, by the plaintiff/respondent No.1 for seeking direction to the Nazir of this Court to remove/destroy, the counterfeit product(s) of the defendants from the market, as the same is being sold in the open market in violation of the order of this Court dated 21.12.2015. When application bearing CMA No.6507/2016 was fixed for hearing, on 27.7.2016 counsel for the defendant No.1/appellant was called absent. The Court passed an order to issue direct notice to the Directors of the defendant No.1/appellant to appear in person to answer as to why they failed to comply with the order dated 21.12.2015. However, in the concluding paragraph, the Court has passed the following order: -

*“Let Nazir accompany the representative of the Plaintiff and upon pointation of the Plaintiff, the premises, shops, godown etc., where goods bearing any infringing or counterfeit of defendant No.1’s trademark are offered for sale or stocked must be sealed by Nazir immediately. Nazir to submit his report within two weeks, Nazir’s Fee of Rs.20,000/- for services will be borne by the Plaintiff.”*

At this juncture, learned counsel for the appellant submits that when the aforesaid order was passed, he was on general adjournment so he could not appear. Learned counsel for the respondent No.1 submits that in

compliance of the order passed by the learned Single Judge dated 27.07.2016, Nazir has already sealed the shops and offices of the appellant and there is no dispute in this regard. Learned counsel for the respondent No.1 has pointed out Annexure “R/2” of the objection filed by the respondent No.1, which is a compliance report of the Nazir.

Learned counsel for the appellant and the respondent No.1 have filed a joint statement in which the appellant through their counsel undertakes that sub-dealers and dealers will not sell alleged counterfeit products (Cement) in the said shops and offices till the final disposal of Suit No.131/2016. It is further stated that due to sealing of the shops and offices the various dealers and sub-dealers have been deprived from their businesses. This statement is taken on record and keeping in mind the undertaking given by the appellant’s counsel the impugned order is modified that the appellant shall not sell any counterfeit products (Cement) till final disposal of Suit No.131/2016. In case of any violation of this undertaking, respondent No.1 may move proper application in the trial Court for the revival and resurrection of the order of sealing action. Nazir may de-seal offices and shops and submit report in the trial Court. All boarding and lodging expenses required for de-sealing shall be borne by the appellant in actual.

High Court Appeal is disposed of in the above terms.

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