

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.596 of 2019

Plaintiff : Master Motors Corporation (Pvt.) Limited,
through Mr. Mirza Mehmood Baig and Hanya
Haroon, Advocates

Defendant : Master Road Corporation SMC (Pvt.) Limited,
No.1 through Ms. Amna Salman Ahmed, Advocate

Defendants : Karachi Port Trust and 6 others
No. 2 to 7 (Nemo)

Suit No.880 of 2019

Plaintiff : Master Road Corporation SMC (Pvt.) Limited,
through Ms. Amna Salman Ahmed, Advocate

Defendant : Master Motors Corporation (Pvt.) Limited,
No.1 through Mr. Mirza Mehmood Baig and Hanya
Haroon, Advocates

Defendants : Collector of Customs & another.
No. 2 & 3 (Nemo)

J.M No.28 of 2019

Applicant : Master Road Corporation SMC (Pvt.) Limited,
through Ms. Amna Salman Ahmed, Advocate

Respondent : Master Motors Corporation (Pvt.) Limited,
No.1 through Mr. Mirza Mehmood Baig and Hanya
Haroon, Advocates

Respondent : Registrar of Trade Marks.
No. 2 (Nemo)

Date of hearing : -----
: 04.11.2019, 25.11.2019 & 21.05.2020
Date of order : 19.08.2020
: -----

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of C.M.As. No. 5145, 7781 & 10445 of 2019 in Suit No.596 of 2019, filed by Master Motors Corporation (Pvt.) Limited (*hereinafter referred to as "MMC"*), C.M.A. Nos. 7498 & 10446 of 2019 in Suit No. 880 of 2019 and C.M.A. Nos. 7496 & 10447 of 2019 in J.M. No.28 of 2019, filed by Master Road Corporation SMC (Pvt.) Limited (*hereinafter referred to as "MRC"*).

1. **C.M.As. No. 5145, 7781 & 10445 of 2019 in Suit No.596 of 2019**

Suit No. 596 of 2019 has been filed by the MMC against the MRC and others for declaration, permanent injunction against the alleged infringement of the registered trademark/trade name “MASTER”, passing off and unfair competition under Trade Marks Ordinance, 2001 (**“Ordinance, 2001”**), rendition of accounts and damages, alleging therein that it being part of Master Group of Industries has diversified into many different industries such as foam, furniture, rubber products, building material, solar, wind & green energy, textiles and general trading. Besides, through the sale of its commercial vehicles, it has also established itself as a major player in the automotive industries and the most popular categories of its vehicles are MASTER GRANDE and MASTER LINE. It is further alleged that in the year 2015, the MMC collaborated with Zhengzhou Yutong Bus Co. Ltd. and established a manufacturing plant in Karachi and the vehicles manufactured and assembled by the MMC with the collaboration of said company are being sold under various brands such as MASTER FOTON and YUTONG MASTER. It is also alleged that the MMC’s vehicles sold under the trademark/trade name MASTER, either alone or in conjunction with another mark, have become well reputed amongst transporters and are in high demand in Pakistan and other countries including USA, UAE, Bangladesh, India and Afghanistan and MMC has duly secured its rights in the brand MASTER and obtained registration of the same in the relevant class-12 with Government of Pakistan, Trade Marks Registry, Karachi. It is the claim of MMC that being the first ever adopter and user of the trademark MASTER, it owns the exclusive rights of selling, trading and dealing with the said trademark/trade name. It is further claim of the MMC that the trademark MASTER is associated exclusively with it, rendering the unauthorized use of it in conjunction with any other mark in respect of the same or similar products by other manufactures, service providers and traders as

infringement of the MMC's vested rights and any such unauthorized use would also tantamount to passing off as well as unfair competition. It is case of the MMC that the MRC is engaged in the import, distribution and sale of infringing products bearing trademark/trade name MASTER, that products include buses under the mark 'ROAD MASTER' which is deceptively similar to the MMC's registered trademark MASTER in sheer negation and contravention of statutory provision enunciated under Section 39 and 40 of the Ordinance, 2001 and such inexcusable act is an infringement of MMC's exclusive proprietary rights vested in the trademark MASTER for which it is entitled to a relief under Section 46 of the Ordinance, 2001. It is further case of MMC that MRC has imported the said infringing goods into Pakistan via Sri Lanka; hence, MMC apprehends that more consignments may be en-routed. It is also case of MMC that it has filed a complaint with Director General IPR (Enforcement), Islamabad under the relevant laws to take enforcement action and detain the infringing goods/vehicles, which is still pending adjudication; however, MMC in order to ensure that the infringing vehicles are not released, have approached this Court through this suit. MMC has filed C.M.A. No.5145/2019, under Order XXXIX, rules 1 & 2, C.P.C., seeking interim injunctive relief restraining MRC, its agents etc. from using/ infringing the trademark MASTER from marketing, promoting, trading, importing and selling through retail outlets or online and from infringing products under the mark MASTER and/or ROAD MASTER in any manner whatsoever and/or any close variation thereof till disposal of this suit. While C.M.A. No.7781/2019 has been filed by the MRC, under Order XXXIX, rule 4 read with Section 151, C.P.C., seeking vacation, discharge and modification in interim relief granted by this Court, vide orders dated 01.04.2019 and 15.04.2019 and C.M.A. No.10445/2019 has been filed by MMC, under Order XXXIX, rule 2(3), C.P.C., read with Section 3 of the Contempt of Court Act, seeking attachment of the properties and an order detaining

the proposed contemnors in civil prison for breach of ad-interim orders, dated 01.04.2019 and 15.04.2019, passed by this Court.

Mr. Mirza Mehmood Baig, learned counsel for MMC/plaintiff, while arguing listed applications in Suit No. 596/2019 has reiterated the facts of the plaint in said suit. He has contended that MMC is the registered proprietor of the trademark MASTER not only in Class 12 which pertains to the manufacture of the buses and apparatus for locomotion but also in Class 39 which pertains to transportation services and since MRC (*defendant No.1 in said suit*) is engaged in the import, distribution and/or sale of the infringing products bearing the trademark MASTER including buses under the mark ROAD MASTER, which is imitated mark upon the same goods of MMC, it filed Suit No.596/2019 *inter alia* to restrain MRC from using, manufacturing, marketing, distributing or selling of the plaintiff's products under the trademark MASTER and/or any variation thereof. He has further contended that vide ad-interim order, dated 01.04.2019, this Court restrained MRC from using the trademark and selling or infringing MMC's trademark MASTER; thereafter, vide order dated 15.4.2019, this Court extended the scope of the said ad-interim order to defendants No.2 to 7 and restrained them from releasing the goods carrying trademark of MMC and it was, thereafter, the MRC filed C.M.A. No.5145/2019 in said suit seeking discharge and/or modification of said interim order. He has further contended that the MRC has filed its counter affidavit to C.M.A. No. 5145/2019 wherein it has provided history of all its activities outside the transportation category with chronological developments and trademark registrations and applications that are entirely irrelevant to Classes 12 and 39. He has added that MRC instead of rebutting MMC's indomitable assertion and plea that it is the prior user and registered proprietor of the mark MASTER, placed its entire focus on irrelevant assertions, and miserably failed to establish prior use of the mark MASTER or ROAD MASTER upon buses or transportation services and

MMC has already responded through its rejoinder to the counter affidavit submitted by MRC in response to the MMC's said C.M.A., wherein among other strong rebuttals, it has also been pointed out that MMC had secured interim relief in its favour as to the exclusive use of the trademark MASTER in numerous cases and foremost and relevant example of such relief in favour of MMC came about in Suit No.98/2019, filed before IPT Lahore, the very basis of that was its registration of the mark MASTER in Class 39. He has also contended that MMC also filed a suit against MRC, through its single member, namely, Mr. Sheikh Javed Iqbal among others, before the Intellectual Property Tribunal at Lahore and vide order, dated 21.5.2019, the Tribunal restrained MRC from using the deceptive trademark ROAD MASTER and the word MASTER alone and/or in conjunction with any other word in respect of bus services/ transport services etc. He has also contended that MRC has no registration for the trademark MASTER in Class 12 and by MRC's own admission, it is incorporated on 8th March 2017, and that is the first and only tangible initiation of its use of the trademark MASTER and; hence, it emerges as a matter of record that MMC is the prior user of the trademark MASTER when it comes to the manufacture of buses and vehicles, or using the same in transportation services. He has also contended that MMC has made out prima facie case in its favour for the grant of interim injunctive relief and the balance of convenience lies in its favour and it will suffer irreparable loss if C.M.A. No. 5145/2019 is not allowed. He has further contended that since the alleged contemnor in C.M.A. No. 10445/2019 has committed breach of ad-interim orders, dated 01.04.2019 and 15.04.2019, he has exposed himself for contempt proceedings. In support of his contentions, Mr. Baig has relied on the following case-law:

- (i) Sayyed Engineering v. Tristar Industries (*Pvt.*) Ltd. (2001 CLC 1368).
- (ii) *Dewan Sugar Mills (Pvt.) Ltd. v. M.B. Abbasi and others* (2007 YLR 2672).

- (ii) *Naseem Ahmed v. Messrs Samiuddin Ramzan Khan and 2 others* (2004 CLD 315).
- (iv) *Popular Food Industries Ltd. v. Maaza International Company LL. C and another* (2004 CLD 1509).
- (v) *Tri-Star Industries (Pvt.) Ltd v. Messrs. Trisa Bursten Tabrik A. G. and others* (1999 YLR 638).
- (vi) *Messrs. Shield Corporation Ltd. v. Dalda Foods (Pvt.) Ltd* (2015 CLD 528).
- (vii) *Wrangler Apparel Corporation through Authorized Signatory v. Axfor Garments through Proprietor/ Manager/Partners* (2008 CLD 70).
- (viii) *Messrs. Excise Pakistan Limited v. Pakistan Accumulators (Pvt.) Ltd. and 2 others* (2010 CLD 890).
- (ix) *Jubilee Lie Insurance Company Limited through Zahid Barki v. United Insurance Company of Pakistan Ltd. through Dy. Managing Director and other* (2016 CLD 1663).
- (x) *Nadeem Ijaz and others v. Malik Ehsan Ullah and others* (2006 CLD 234).
- (xi) *Hamdard Laboratory (WAQF) Pakistan, through Director v. Muhammad Fahim* (2016 CLD 2144).
- (xii) *Messrs Neucon Pakistan Ltd.; in the matter of* (2019 CLD 37).
- (xiii) *Roznama Hamdard though Chief Editor v. Hamdard National Foundation Pakistan* (2010 SCMR 95).
- (xiv) *Farooq Ghee & Oil Mills (Pvt.) Ltd. v. Registrar of Trade Mark, Trade Mark Registry and others* (2015 SCMR 1230).
- (xv) *Mian Muhammad Latif v. Province of West Pakistan* (PLD 1970 SC 180).
- (xvi) *SUI Northern Gas Company v. Pakistan Cement Industries* (PLD 1968 Lahore 876).
- (xvii) *Haleema Bibi and another v. Saqib Shamim and others* (PLD 2000 Lahore 195).
- (xviii) *N.Y Corporation (Pvt.) Ltd. v. Province of Sindh and others* (2009 YLR 263).

On the other hand, Ms. Amna Salman Ahmed, learned counsel for MRC/defendant No.1 in Suit No.596/2019 while reiterating the facts of the plaint in Suit No.880/2019 has maintained that MMC has falsely claimed the ownership of the trademark MASTER, as the same has never been used by it, so also ROAD MASTER, for the goods and services falling in class 39, which MRC has been carrying out for its passenger and cargo transportation business. She has further maintained that the MMC has misused and abused its totally different class 12, Registration No.187815, which was malafidely and fraudulently obtained by it despite the fact that

several MASTER formative marks were prior registered in class 12, therefore, MRC has filed J.M No. 28 of 2019 for the cancellation of the alleged registration of the trademark MASTER in class 12. She has also maintained that MRC is the bonafide user of mark ROAD MASTER in class 39 being the prior user of the said mark, furthermore, MMC has no justification to claim any right in relation to MASTER and/or ROAD MASTER used as a service mark in class 39 for passengers and cargo transportation services as they have never used MASTER or ROAD MASTER as a service mark for passengers and cargo transport services in class 39. She has further maintained that MRC's Master Group of Companies has honestly been using the trademark MASTER for four decades and it is well known throughout Pakistan and around the world, particularly in Middle East, therefore, MMC has no grounds to challenge the MRC's use of the trademark MASTER and/or ROAD MASTER, by filing a suit and obtaining restraining orders against the MRC. She has added that MMC has violated Section 19 of the Trade Mark Ordinance, 2001. She has further added that MMC has no legal or moral right to press its illegal demands against MRC. She has also maintained that the averments made by MMC in the suit are unauthorized, mala fide and an act of fraud upon MRC and the public and in fact MMC is attempting to get benefit from the impression that they are the exclusive users and owners of the trademark MASTER and ROAD MASTER, otherwise the fact that they neither have any prior use nor do they have any current use in class 39 clearly proves their malicious intentions. She has added that MMC has failed to make out a prima facie case against the MRC nor have they been able to prove that they have suffered any irreparable loss whatsoever and the balance of convenience does not lie in favour of MMC; and it is the MRC who is suffering irreparable loss due to mala fide and illegal actions of MMC restraining MRC's buses at the port which are to be used for transport services and; therefore, the application for interim injunction

(C.M.A. No. 5145/2019) is liable to be dismissed. She while arguing C.M.A. No.7781/2019 has maintained that since MMC through misrepresentation and misstatement obtained ad-interim restraining orders against MRC, the said C.M.A. was filed by it for recalling of the same; however, the ad-interim orders are likely to merge in final order to be passed on C.M.A. No. 5145/2019. She has further maintained that no violation of ad-interim orders has been made by the alleged contemnor, hence; C.M.A. No.10445/2019 being misconceived and devoid of any merit is liable to be dismissed. In support of her contentions, learned counsel has referred to following case-law:

- (i) *Messrs Master Textile Mills Ltd. through duly Authorized Signatory v. Master Fabrics through Managing Partner and 5 others* (2007 CLD 991).
- (ii) *Abdul Wasim v. Messrs HAICO through Sole Proprietor/Partner and 2 others* (2002 CLD 1623).
- (iii) *Formica Corporation v. Pakistan Formica Ltd.* (1989 SCMR 361).
- (iv) *Messrs Platinum Pharmaceuticals Company (Private) Limited v. Stand Pharm Pakistan (Private) Limited and 3 others* (2006 CLD 1109).
- (v) *Soneri Travel and Tours Ltd. through Chief Executive/Director/- Secretary v. Soneri Bank Limited* (2011 CLD 193).
- (vi) *Messrs Ismail Industries Limited through Authorized Officer v. Mondelez International through Director, Partner, Owner and 2 others* (2019 CLD 562).
- (vii) *Brands for Less L.L.C. v. Brands 4 Less through Proprietor/Partner/Owner* (2019 CLD 146).
- (viii) *Dalda Foods (Private) Limited v. M/s Shield Corporation Limited* (2016 CLD 1864 Sindh).
- (ix) *Messrs Hero Motors Ltd. through Authorized Signatory v. Babar Auto Trading and Manufacturing Company through Proprietor* (2010 CLD 22 Karachi).
- (x) *Malik Muhammad Rafiq Awan v. Javad Iqbal and others* (2012 CLD 905 Lahore).
- (xi) *Crescent Pencils Limited vs. Indus Pencil Industries Limited and another* (1989 CLC 2005).

Heard the learned counsel for the parties and perused the material available on record. For convenience sake, I deem it appropriate to

reproduce hereunder the relevant provisions of Sections 39, 40 & 46 of the Ordinance, 2001.

39. Rights conferred by registration.- (1) *A registered trade mark shall be a personal property.*

(2) *The proprietor of a registered trade mark shall have exclusive rights in the trade mark which are infringed by use of the trade mark in Pakistan without his consent.*

(3) *Without prejudice of the right of the proprietor of a registered trade mark to obtain any relief under any other law for the time being in force, the proprietor shall also have the right to obtain relief under this ordinance if the trade mark is infringed.*

(4) *References in this Ordinance to the infringement of a registered trade mark shall be to any such infringement of the rights of the proprietor.*

(5) *The rights of the proprietor shall have effect from the date of registration; Provided that no infringement proceedings shall be pending before the date on which the trade mark is in fact registered.*

(6) *The rights conferred by registration of trade mark under this ordinance shall extend to trade marks registered under the Trade Marks Act, 1940 (V of 1940).*

40. Infringement of registered trade mark.- (1) *A person shall infringe a registered trade mark if such person uses in the course of trade a mark which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered.*

(2) *A person shall infringe a registered trade mark if such person uses in the course of trade a mark because-*

(a) *the mark is identical with the trade mark and is used in relation to goods or services similar to the goods or services for which the trade mark is registered; or*

(b) *the mark is deceptively similar to the trade mark and is used in relation to goods or services identical with or similar to the goods or services for which the trade mark is registered,*

there exists a likelihood of confusion on the part of public, which includes the likelihood of association with the trade mark.

(3) *A person shall infringe a registered trade mark if the person uses in the course of trade a mark which is identical with, or deceptively similar to, the trade mark in relation to-*

- (a) *goods of the same description as that of goods in respect of which the trade mark is registered;*
- (b) *services that are closely related to goods in respect of which trade mark is registered;*
- (c) *services of the same description as that of services in respect of which the trade mark is registered; or*
- (d) *goods that are closely related to services in respect of which the trade mark is registered.*

(4) A person shall infringe a registered trade mark if the person uses in the course of trade mark which-

- (a) *is identical with or deceptively similar to the trade mark; and*
- (c) *is used in relation to goods or services which are not similar to those for which the trade mark is registered,*

where the trade mark is a well-known trade mark, or has a reputation in Pakistan, and the use of the mark being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.

(5) A person shall infringe a registered trade mark if the person uses such registered trade mark as his trade name or part of his trade name.

(6) A person shall infringe a registered trade mark if the person uses such registered trade mark as his domain name or part of his domain name or obtains such domain name without consent of the proprietor of the registered trade mark, with the intention of selling such domain name to another including the proprietor of the registered trade mark.

(7) A person who applies a registered trade mark to material intended to be used for labeling or packaging goods shall be treated as a party to any use of the material which infringes the registered trade mark if when he applied the mark he knew or had reason to believe that the application of the mark was not duly authorized by the proprietor or a licensee.

(8) In all legal proceedings, a person who sells or offers or exposes goods for sale, or puts them on the market or has in possession for sale or any purpose of trade or manufacture any goods bearing a mark which infringes a registered trade mark shall be treated as a party to infringement of a registered trade mark, unless he proves that-

- (a) *having taken all reasonable precautions, he had to reasons to suspect the genuineness of the mark; and*

- (b) *on demand made by tribunal, he gave all the information in his power with respect to the persons from whom he obtained such goods; or*
- (c) *he had otherwise acted innocently.*

46. Action for infringement.- (1) *Save as otherwise provided in this Ordinance, an infringement of a registered trade mark shall be actionable by the proprietor of the trade mark.*

(2) *In an action for infringement all such relief by way of damages, injunctions, accounts or otherwise shall be available to the proprietor of the trade mark as is available in respect of the infringement of any other property right.*

(3) *Nothing in this Ordinance shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or services as services provided by another person, or the remedies in respect thereof.*

In terms of section 39 (ibid), a registered trade mark is a property and proprietor thereof thus has an exclusive right in a registered trademark and in case of any infringement, the proprietor has the right to obtain any relief under the Ordinance, 2001 and under any other law for the time being in force. Section 40 covers the instances and provides elements of the infringements. Under section 40(1), a person infringes a registered trade mark if he uses in a course of trade, a mark which is identical with the trade mark in relation to goods or services, which are identical with those, for which it is registered. Under section 40 (2), a person infringes a registered trade mark if such person uses in the course of trade a mark which is deceptively similar to the trade mark and is used in relation to goods or services identical with or similar to the goods or services for which the trade mark is registered. Under section 40(3), a person infringes a registered trade mark if he uses in the course of trade a mark which is identical with, or deceptively similar to, the trade mark in relation to (a) goods of the same description as that of goods in respect of which the trade mark is registered; (b) services that are closely related to goods in respect of which trade mark is registered; (c) services of the same description as

that of services in respect of which the trade mark is registered; or (d) goods that are closely related to services in respect of which the trade mark is registered. Section 40 (4) provides that a person shall infringe a registered trade mark if he uses in the course of trademark in relation to goods or services which are not similar to those for which the trade mark is registered when deceptively similar to the registered trade mark. Section 40 (5) stipulates that a person shall infringe a registered trade mark if he uses such registered trade mark as his trade name or part of his trade name. Section 40 (6) specifies that a person shall infringe a registered trade mark if the person uses such registered trade mark as his domain name or part of his domain name or obtains such domain name without consent of the proprietor of the registered trade mark, with the intention of selling such domain name to another including the proprietor of the registered trade mark. Section 46 postulates that an infringement of a registered trade mark shall be actionable by the proprietor of the trade mark. Section 46(2) proposes that in an action for infringement, all such relief by way of damages, injunctions, accounts or otherwise shall be available to the proprietor of the trade mark as is available in respect of the infringement of any other property right.

It appears from the pleadings of the parties that MMC claims to be a part of Master Group of Industries and is indulged in sale of commercial vehicles in the name of MASTER GRANDE and MASTER LINE and also manufacturing and selling buses under brand name MASTER FOTON and YUTONG MASTER. Profiles of said vehicles are annexed with plaint as annexure "D" at page 193 to 223. MMC claims that it has protected its rights in the brand MASTER by obtaining registration of the same in the relevant Class 12 of the International Classification of Goods and Services, pertaining to vehicles; apparatus for locomotion by land, air or water, with Government of Pakistan, Trade Marks Registry, Karachi.

Trademark Registration Certificate is annexed with the memo of plaint as annexure "F" at page 227. This fact has not been denied by the MRC, rather it has been admitted by it in its Counter Affidavit to the C.M.A. that it is not in the business of manufacturing and/or selling buses and other vehicles. However, it has been asserted that MMC is not the first ever adopter and user of the trademark MASTER for passenger and cargo transport business and services in Class 39 and it is the MRC who has prior use of ROAD MASTER as a service mark in said class. In its Affidavit-in-Rejoinder, MMC while rebutting the said assertion of the MRC has stated that it has been using the trademark MASTER upon services falling in class 39 since long before its use by MRC. Learned counsel for the MMC with his written synopsis has filed copy of the Trademark Registration Certificate bearing No. 197433 with filing date as 19-06-2004, which shows that MMC's trademark MASTER is registered in class 39, which was renewed for 10 years with effect from 19.06.2014 to 19.06.2024. It has been observed in the case of Messrs Dewan (supra) by this Court that once a trademark is registered under the provisions of Ordinance, 2001 it restricts the other parties from using such trade mark. It has also been observed in the case of Naseem Ahmed (supra) by this Court that Registration Certificate of the trademark is a prima facie evidence, in all legal proceedings relating to the relevant trademark, to the effect that the registration is valid and after the expiration of seven years from the date of registration it shall be taken to be valid and conclusive in all respect unless such registration was obtained by fraud. Hence, I am of the considered view that the MMC has made out a prima facie case in its favour for grant of injunctive relief, and allowing to use the trade mark MASTER and ROAD MASTER by MRC would cause inconvenience to MMC and would lead to deception and contusion in terms of the provisions of Ordinance, 2017. The balance of convenience also lies in favour of MMC for the purpose of granting injunction and it is the MMC that will suffer

irreparable loss if instant application is not allowed. I, therefore, allow C.M.A. No. 5145 of 2019, as prayed. Consequently, C.M.A. No.7781/2019 filed by the MRC stands dismissed on being infructuous.

C.M.A. No.10445/2019 filed by the MMC, under Order XXXIX, rule 2(3), C.P.C. is dismissed as nothing has been brought on record to establish that MRC has committed breach of ad-interim orders dated 01.04.2019 and 15.04.2019, passed by this Court.

2. C.M.As. No. 7498 & 10446 of 2019 in Suit No. 880 of 2019

Suit No. 880 of 2019 has been filed by the MRC against the MMC and two others for declaration, permanent injunction, damages etc. relating to the trademark ROAD MASTER and trade name MASTER used in respect of passenger and cargo transport business and services, alleging therein that the MRC is a business house commonly known as Master Group of Gujranwala. It is alleged that initially on 26.09.1982 as a result of partnership, M/s. Master Industries was first established which was subsequently registered on 17.03.1983, under Partnership Act, 1932 to carry on business of manufacturing inter alia sanitary fittings under the trademark MASTER and then on 30.5.1988 in furtherance of the above, another partnership was formed, namely, M/s. Master Poly Plast Industries to carry on the business of manufacturing plastic and P.V.C. products and bathroom accessories etc. under the trademark MASTER. Subsequently, on 20.3.2003, another company of the Master Group, namely, Master Poly Plastic Industries Limited was incorporated under the trademark MASTER. Besides, Master Textile and Ceramic Industries Limited, Master Beverages & Foods Limited were also incorporated under the Companies Ordinance, 1984. While the word MASTER was adopted and used by Javed Iqbal, one of the partners in the said firms, in relation to passengers and cargo transport services as a trade name and ROAD

MASTER was adopted and used as a service mark for passengers and cargo transport business and services falling in class 39 as early as 2016, whereas said Javed Iqbal thereafter incorporated MRC on 08.03.2017 as a sole proprietor for conducting the business of transportation of passengers and cargo using ROAD MASTER as a service mark for passengers and cargo transport services as adoption of word MASTER was a natural choice for him. It is the claim of the MRC that the first ever use of the trademark/trade name MASTER was by it in relation to sanitary fittings in the year 1982 and, thereafter, the use of the mark was extended to other goods. It is case of the MRC that the MMC has filed Suit No.596/2019 before this Court by practicing fraud and making misstatement on oath and without having any prior use, registration and legal character in respect of trademark or trade name MASTER for passenger and cargo transport business and services in class 39 and succeeded to obtain ad-interim restraining orders against MRC and other pro forma defendants, despite the fact that the MRC has the legal character in ROAD MASTER by virtue of prior adoption and use. It is further case of the MRC that the MMC despite having a false claim of the ownership of trademark MASTER never used MASTER and/or ROAD MASTER for passengers and cargo transport services and business in class 39 in Pakistan and it is the MRC who has prior use of ROAD MASTER as a service mark for passengers and cargo transport service in class 39 in Pakistan in its own right and it continue to use the same. MRC along with its suit has also filed C.M.A. No.7498/2019 (*under Order XXXIX, rules 1&2, C.P.C.*) seeking temporary injunction against the MMC restraining it from using MASTER and/or ROAD MASTER as a service mark for passengers and cargo transport services in class 39 advertising, offer for sale or use and sell MMC's business and services of passengers and cargo transport in class 39 and/or using MASTER and/or ROAD MASTER as a service mark and restraining MMC from interfering into the business and services of

passengers and cargo transport in class 39 of MRC under its proprietary service mark ROAD MASTER and further restraining the defendants No.2 and 3 from obstructing and/or blocking and/or not allowing importation of buses and other vehicles imported by MRC painted with MASTER and/or ROAD MASTER as a name of passenger and cargo transport business in class 39. While, C.M.A. No.10446/2019 has been filed by MMC in the said suit under Order VII Rule 11, C.P.C. seeking rejection of plaint on the grounds that the suit has been filed by an unauthorized person, barred by law and for want of cause of action against MMC.

Ms. Amna Salman Ahmed, learned counsel for the MRC/plaintiff while arguing C.M.A. Nos. 7498 and 10446 of 2019 has maintained that the trademark MASTER is *Publici Juris*/ common to trade and the plaintiff of said suit who is the defendant No.1 in Suit No. 596 of 2019 is using its own trademark under ROAD MASTER. Furthermore, the attempt of MMC for restraining MRC from carrying out their own business is in fact interfering and infringing the rights of MRC from carrying out its bona fide business and the alleged illegal activities of MMC are likely to cause irreparable loss, injury and damage to the goodwill, reputation and business of MRC; hence, unless the aforesaid illegal activities of MMC are restrained by this Court, MRC shall suffer irreparable loss. She has further maintained that there is neither any confusion nor deception in relation to the contested mark by MRC. She has emphasized that MMC is offering passenger and cargo transportation services under class 39, whereas, MRC is involved in the manufacturing of vehicles which fall under class 12 which fact alone is sufficient to establish that MRC and MMC are involved in completely separate business and therefore, there can be no confusion between the vehicles manufactured by the MMC and the transportation services offered by the MRC.

On the other hand, Mr. Mirza Mehmood Baig, learned counsel for MMC/defendant No.1 while arguing said C.M.As has maintained that the present suit is a counter blast to Suit No.596/2019, which was filed earlier by MMC and the present suit has been filed by one Babar Waheed alongwith interlocutory applications, who is not duly authorized person for it through a Board's Resolution. He has further maintained that MRC in its pleadings has claimed that it has used the mark MASTER for a diverse range of goods/services which is absolutely false and deceptive, as the MRC's actual use is limited to sanitary fittings and tiles, which are completely separate from the matter at hand and immaterial to the case per se; moreover, by its own admission, MRC's use even for these products is subsequent to that of MMC; therefore, it is MMC undoubtedly who is the bonafide legal and equitable proprietor and first user of the mark MASTER and has acquired well known status, including in relation to vehicles and allied goods and passengers services, which directly includes transportation services; as such, MMC has been a user of the same since long before MRC; hence, all the claims of MRC regarding legal character are bogus and liable to be rejected outright. He has added that the MRC in its said suit has failed to make out a prima facie case in its favour for grant of interim injunctive relief and the balance of convenience does not lie in its favour and it will be the MMC who would suffer irreparable loss if C.M.A. No. 7498 of 2019 is allowed, which is liable to be dismissed on merit. He has also added that since present suit has been filed by the MRC through an unauthorized person; the same is barred by law, and the plaint lacks cause of action against MMC; therefore, C.M.A. No.10446/2019 has been filed by MMC, under Order VII, rule 11, C.P.C., seeking rejection of the plaint.

It emerges from the pleading of MRC that one of the partners of Master Group of Gujranwala, namely, Javed Iqbal, has adopted trade name ROAD MASTER in relation to passengers and cargo transport

service falling in class 39 as early as 2016, who later on incorporated MRC on 08.03.2017 as a sole proprietor for conducting the business of transportation of passengers and cargo using trademark ROAD MASTER. It has been argued that the trademark MASTER is *Publici Juris*/ common to trade and MRC is using its own trademark under ROAD MASTER. I have already observed while recording my findings on C.M.A. No. 5145 of 2019 that MMC has protected its rights in the brand MASTER by obtaining registration of the same in the relevant Class 12 of the International Classification of Goods and Services, pertaining to vehicles; apparatus for locomotion, with Government of Pakistan, Trade Marks Registry, Karachi. So also, MMC is using the trademark MASTER upon services falling in class 39 under Trademark Registration Certificate bearing No. 197433 which bears filing date as 19-06-2004 and the same was renewed for 10 years with effect from 19.06.2014 to 19.06.2024.

MRC has failed to place on record any documentary piece of evidence to establish that it was the prior user of the mark MASTER in class 12 or 39. In fact, in all documents furnished by the defendant, the bulk of the contents pertain to its work in sanitary, piping, poly plastic, and tiles. It is strange that while the MMC has claimed before the Court that it is the prior user of the trademark MASTER in Class 39, it has failed miserably to substantiate that claim.

So far the contention of learned counsel for MRC with regard to *Publici Juris*/ common to trade is concerned, in the case of Sayyed Engineering (supra) the arguments that the mark CRYSTAL when used upon transparent ball pens is descriptive and therefore, *publici juris* was rejected and the use of the same over several years was held to have given the word a secondary meaning, thereby rendering the use of the same as exclusive to the prior user and outside the domain of lawful use by anyone else. Hence, I am of the view that the MRC has failed to make out a prima

facie case in its favour for the grant of injunction. The balance of convenience also does not lie in favour of MRC but in favour of MMC being registered owner of trademark MASTER in class 12 and 39 and it is in fact MMC who will suffer irreparable loss if the injunction is granted. Hence, C.M.A. No. 7498/2019 is dismissed accordingly.

C.M.A. No.10446/2019 has been filed by MMC in the said suit under Order VII, Rule 11, C.P.C. It appears that in order to appreciate the grounds raised by the MMC for the rejection of the plaint, the evidence is needed to be recorded. Hence, this application is rejected being devoid of merit.

3. C.M.As. No. 7496 & 10447 of 2019 in J.M. No.28 of 2019

J.M. Application No.28 of 2019 has been filed by MRC against MMC and the Registrar of Trade Marks, under Section 80(1), 80(3), 73(1)(a), 22(3), 14(1)(a) & (b), 14 (3) (a), 14(3)(c), 14(4), 17(1), (2), (3) & (4) of the Ordinance, 2001 for revoking wholly and/or invalidating and/or rectifying and/or cancelling the entry in the Register of Trademarks of the trademark "MASTER" registered under No.187815, dated 19th August, 2003 in class 12 in respect of vehicles, apparatus for locomotion by land, air or water on the similar facts as that of Suit No.880 of 2019. MRC alongwith J.M, has also filed C.M.A. No.7496/2019 seeking interim relief against MMC for suspending its registration No. 187815 for trademark MASTER in relation to vehicles etc., while C.M.A. No.10447/2019 has been filed by MMC under Order VII Rule 11 C.P.C. seeking rejection of J.M on the ground that the same is barred by law and for want of cause of action against MMC.

The interim relief has already been confirmed in favour of MMC in Suit No. 596 of 2019 by denying the same to MRC in Suit No. 880 of 2019 Hence, C.M.A. No.7496/2019 is dismissed being devoid of merit. While

C.M.A. No.10447/2019, filed by the MMC under Order VII, Rule 11 C.P.C. seeking rejection of J.M is dismissed as the learned counsel has failed to refer the provision of law under that the instant J.M. is not maintainable. Moreover, the MRC under the law has right to challenge the registration of subject trademark on legal and factual grounds; the merit thereof cannot be decided without recording pro and contra evidence of the parties.

Above are the reasons of my short order, dated 19.08.2020, whereby C.M.A. No. 5145 of 2019 in Suit No. 596 of 2019 was allowed and rest of the C.M.As. were dismissed.

JUDGE

Abrar