

3. At the outset learned counsel for defendant has referred section 18 of the Intellectual Property Organization of Pakistan Act 2012 which speaks that :-

“Jurisdiction of the tribunal. (1) All suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the tribunal.

(2) Notwithstanding anything contained in any other law for the time being in force the tribunal have exclusive jurisdiction to try any offence under intellectual property laws.”

While taking the issue of jurisdiction learned counsel has relied upon section 39 which speaks that :-

“Act to override other laws. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

Accordingly learned counsel for defendant contends that plaintiff is not maintainable, liable to be rejected as jurisdiction lies with the Intellectual Property Tribunal.

4. In contra, learned counsel for plaintiff while referring Trade Mark Ordinance 2001 particularly section 46 which speaks that :-

“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.”

He contends that under the Ordinance jurisdiction was with the District Judge hence about pecuniary jurisdiction on the quantum

which was 1.5 crore this court is competent and routinely suits are being instituted before original side of this court.

5. Perusal of section 44 of the Ordinance 2001 in comparison with Intellectual Property Organization of Pakistan Act 2012 leaves no ambiguity; the definition clause (g) of the Act of 2012 state that intellectual property includes trade mark, patent, industrial design, layout design (topographies) or integrated circuits, copyright and related rights and all other ancillary rights. Besides, in schedule, intellectual property laws/legislation are provided, being relevant same are reproduced herewith:-

The Trade Marks Ordinance, 2001 (XIX of 2001).

The Copyright Ordinance, 1962 (XXXIV of 1962).

The Patents Ordinance, 2000 (IXI of 2000).

The Registered Designs Ordinance, 2000 (XLV of 2000).

The Registered Layout-Designs of Integrated Circuits Ordinance, 2000 (XLIX of 2000).

Sections 478, 479, 480, 481, 482, 483, 485, 486, 487, 488 and 489 of Pakistan Penal code (Act XLV of 1860).

6. In view of above, it is categorical that jurisdiction of district court as well as of this court is barred. Accordingly, plaint is hereby returned and plaintiff would be competent to approach Intellectual Property Tribunal. Listed applications are dismissed of.

J U D G E