

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.2637 of 2017

Tayyaba Motors (Pvt.) Limited  
Versus  
Regal Automobiles Industries & another

Date	Order with signature of Judge
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1. For orders on maintainability of suit  
(vide Court's order dated 6.3.18)
2. For hearing of CMA 17671/17
3. For hearing of CMA 4974/18
4. For hearing of CMA 3932/22

**Dated: 14.11.2022**

**(Order on CMA 3932/22 u/o VII Rule 10 CPC)**

Mr. Muhammad Ali Zahid for plaintiff.  
Mr. Junaid Ahmed for defendants.

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**Muhammad Shafi Siddiqui, J.**-This suit is coming up for its maintainability on the touchstone of Section 18 read with Sections 17(4 to 7) and 2(g) of Intellectual Property Organization of Pakistan Act, 2012. In this suit for infringement of intellectual property right, jurisdiction of this Court is invoked despite referred provisions in the ibid Act 2012. This identical legal question came up for consideration in Suit No.2578 of 2014 when my learned brother was pleased to return the plaint in that suit and in view of aforesaid provision of ibid Act, plaintiff was asked to approach Intellectual Property Tribunal for the redressal of the grievance.

In this suit plaintiff seeks a decree restraining the defendants and/or their servants, agents, distributors etc. from infringing registered "DFSK" trademark of the plaintiff bearing registration No.396494. While deciding the question, my learned brother has expounded the applicability of Section 18 read with Section 2(g) of the ibid Act 2012, which was made applicable in relation to cases that concern with

trademark. This (the instant suit) perhaps is an identical one, the relevant findings in the relied order above, which may apply mutatis mutandis to these proceedings, are as under:-

*The above makes it clear that ‘Trade-Mark’ is specifically included. Now, I would refer to Section 2(g) of the Act, 2012 which defines ‘Intellectual Property’ as:-*

**“Section 2(g) “Intellectual Property” includes a trademark, patent, industrial design, lay-out design (topographies of copyright and related rights and all other ancillary rights.”**

*Here, it would also be relevant to refer the Section 2(h) of the Act which reads as:-*

**Section 2(h) “Intellectual Property Laws” means the laws specified in the schedule;**

*From above definition, it is clear that all the laws, specified in the schedule of the Act, 2012 would fall within meaning of the “Intellectual Property Laws’. The schedule, so provided, specified the related laws as:-*

**The SCHEDULE**

**(See section 2(h))**

- 1) **The Trade Marks Ordinance, 2001(XIX of 2001).**
- 2) **The Copyright Ordinance, 1962 (XXXIV of 1962).**
- 3) **The Patents Ordinance, 2000 (LXI of 2000).**
- 4) **The Registered Designs Ordinance, 2000 (XLV of 2000).**
- 5) **The Registered Layout-Designs of Integrated Circuits Ordinance, 2000 (XLIX of 2000).**
- 6) **Sections 478, 479, 480, 481, 482, 483, 485, 486, 487, 488 and 489 of Pakistan Penal code (Act XLV of 1860).**

*The specific inclusion of the Ordinance 2001 in the schedule of the Act 2012 makes it clear that such law would also fall within definition of the “Intellectual Property Law’ therefore, within meaning of the Section 39 of the Act, the Act 2012 shall ‘over-ride’ other related laws which legally includes ‘Trade-Mark Ordinance 2001’ therefore, jurisdiction in such like matter shall lie with no other Court (s) but the ‘Tribunal’, so established within meaning of the Act 2012. The clear purpose was to establish a court that would be able to deal with all matters. It is needful to add that there is not the slightest indication that the intention was to limit the range of disputes that would fall within the ambit of the Tribunal, established under the Act 2012 that some issues relating to ‘Intellectual Property Laws’ would fall within its jurisdiction and others not instead, the breadth of language used suggests that the statutory purpose was to create a specialist court that would deal with all matters relating to Intellectual Property Laws which shall include those matter (s), too, that are relating to “Intellectual property rights” in an integrated manner and for matters*

*‘concerned therewith or incidental thereto’ therefore, it would not be permissible for one to file a suit for such like matter (s), arising out of “Intellectual Property Laws’ of cause thereof is based on an allegation of determination of any infringement of such right and entitlement, which either are integrated; concerned or ancillary to such Law else the purpose of creating Special Tribunal shall fail if so, it shall also cause prejudice to the purpose and language of Section 18 (1) of the Act which insists that:-*

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

*The above provision leaves nothing ambiguous that the Tribunal even, shall be competent to entertain other civil proceeding which are based on an allegation of infringement of intellectual property laws hence it is quite safe to conclude that even an attempt to include relief, not specifically detailed in Act 2012, in a suit entirely based on an allegation of infringement of Intellectual Property Laws, would not justify filing such lis before any other Court except the Tribunal. Needless to reaffirm another legally established principle that when a special court is created the apparent purpose of creating a single forum for resolving disputes of a particular type is not to be stultified by a resort to undue literalism. Guidance is taken from the case of Xolile David Kham v. Electoral Commission(2016 SCMR 563) wherein at Page-586, legal position for creating a special Court/Tribunal detailed as:-*

*“.....The clear purpose was to establish a court that would be able to deal with all electoral matters. It was constituted with the same status as the High Court and with a judge of the Supreme Court of Appeal as its chairperson. It is to resolve electoral disputes as a matter of urgency.<sup>33</sup> There is not the slightest indication that the intention was to limit the range of disputes that would fall within the ambit of the Electoral Court's jurisdiction, so that some electoral issues would fall within its jurisdiction and others not. Instead, the breadth of language used suggests that the statutory purpose was to create a specialist court that would deal with all electoral matters. And our jurisprudence holds that when a specialist court is created the apparent purpose of creating a single forum for resolving disputes of a particular type is not to be stultified by a resort to undue literalism and too careful a parsing of statutory language.”*

*9. In view of above, it is categorical clear that jurisdiction of District Court as well as of this Court in such like matter (which squally fall within definition of “Intellectual Property Act, 2012” is barred. Accordingly, plaint is hereby returned, however, plaintiff would be competent to approach Intellectual Property Tribunal. CMA No.12291/2017 filed by defendants is allowed in the above terms; consequently, application*

*under Order XXXIX Rule 1 & 2 CPC [CMA No. 17419/2014 filed by the plaintiff is hereby dismissed.*

My learned brother has covered almost every aspect of the case that is argued by the defendant's counsel in the instant matter insofar as maintainability is concerned. The claim of passing off has been included mischievously despite that it is claimed to be an infringement of registered trademark. The only concern of the plaintiff is that at the relevant time no notification was issued, which could identify the establishment of Tribunal if it was operating and functioning at the relevant time under section 16 of *ibid* Act, when the suit was filed. This is not borne out of the pleadings as no such grounds have been raised at the time of invoking jurisdiction of this Court. It was nowhere alleged that since there is no notification with regard to notifying the tribunal or appointment of presiding officer, therefore, plaintiff was compelled to file this suit. In the absence of such pleadings, it cannot be presumed or assumed that this Court had to exercise the jurisdiction, which jurisdiction otherwise vests with the Tribunal.

Even otherwise record reveals that the suit was filed in the year 2017 whereas subject Act conferring the jurisdiction before the Tribunal was of 2012. Thus, I do not find any reason to form any other view than the one formed by my learned brother. Hence, the application under order VII Rule 10 CPC (CMA No.3932/2022) is allowed and the plaint is returned to the plaintiff to enable him to avail the jurisdiction of Intellectual Property Tribunal. Copy of the pleadings however be retained by the office at the time of returning the plaint to the plaintiff.

**Judge**