

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1652 of 2021

[**Muhammad Amin versus Asif Younus and others**]

Date of hearing : 08.11.2022.

Plaintiff : Muhammad Amin through M/s. K.A. Wahab, Fahad Arif Khilji, Sultan Ahmed Sheikh and Salman Ahmed Sheikh, Advocates.

Defendant No.1 : Asif Younus, through Mr. Moiz Ahmed, Advocate for Defendant No.1.

Defendant No.2 : Nemo.

Defendant No.3 : The Registrar of Trade Marks, through M/s. Salim Ghulam Husein and Abdul Basit, Advocates.

ORDER

Muhammad Faisal Kamal Alam, J: Through this Order, I intend to dispose of an Application – C.M.A. No.11731 of 2022, filed under Order VII, Rule 11 of Civil Procedure Code, 1908 (“CPC”), requesting for rejection of the plaint, as it is barred under the Intellectual Property Organization Of Pakistan of Act, 2012 [**IPO Act**].

2. Pleadings averred that Plaintiff and Defendant No.1 entered into a partnership business for real estate development under the name and style – ‘**Sumsum Builders and Developers**’, which is Defendant No.2. In the year 2018 a dispute arose between Plaintiff and Defendant No.1, which was resolved by agreeing that both Plaintiff and Defendant No.1 will use trademark **Sumsum** without interference by each other. However, in violation of the undertaking, Defendant No.1 wants to register the trademark **Sumsum**, solely in his name, in violation of the agreement / arrangement between the Plaintiff and private Parties hereto.

3. It is argued by learned counsel for Defendant No.1 that since the present *Lis* is about alleged enforcement and infringement of trademark, claiming to be that of Plaintiff, thus this cause should be decided by the Tribunal established under a Special Law, viz. **IPO Act** [*ibid*]; cited an unreported Decision of this Court passed in Suit No.2058 of 2009 [*Mahle Engine Components Japan Corporation versus Azam Autos and others*], and contented that this Court [in the above Decision] after discussing the case law on the scope of above statute, has returned the plaint; besides, relied upon a recent judgement handed down by the Honourable Supreme Court in the case of *Muhammad Multazam Raza versus Muhammad Ayub Khan and others* – 2022 S C M R 979.

4. The legal team of Plaintiff has rebutted the above arguments, by referring to the Counter Affidavit. The main arguments of Plaintiff's counsel is that the present case is not about a conflict between Special and General Statute, rather there is a choice of jurisdiction given under the two different Special Statutes, that is, the above IPO Act and Trademark Ordinance, 2001 [“**TMO**”]. Contended that under Section 117 of TMO, a suit for the infringement of Trademark is to be instituted in a District Court; since, this Court is vested with a special Original Jurisdiction, thus, considering the monetary amount involved in the present *Lis*, the suit is filed in the Original Jurisdiction of this Court, in terms of above provision of TMO. He has cited the following case law_

1. **2017 C L D 1198 [Supreme Court of Pakistan]**
[*Syed Mushahid Shah and others versus Federal Investment Agency and others*] – **Mushahid Case**; and
2. **Unreported Decision of this Court in Suit No.471 of 2022**
[*East Rice Company [Private] Limited and others versus Moon Rise Corporation and others*].

5. Arguments heard and record considered.

6. When the case was reserved for order, Mr. Salim Ghulam Husein, representing Defendant No.3 [the Registrar of Trade Marks] has filed Statement that in compliance of Order dated 10.08.2021, the Office of Defendant No.3 has not issued Certificates of Registration of Trademark to Defendant No.1.

7. Adverting to the case law cited by learned Advocate for Defendant No.1 – Applicant of the above C.M.A. In the first Unreported Judgment of this Court, the learned Judge after deliberating upon the above mentioned two Statutes and their provisions, has come to the conclusion that IPO Act will override other laws including TMO and consequently, it is held that plaint of the Suit must be returned; in the second Reported Decision of Honourable Supreme Court, it is held, while dealing with the conflict between two Special Laws, *inter alia*, about the jurisdiction to adjudicate a Cause concerning the intellectual property rights, (as referred to by Plaintiff's counsel in the present *Lis*), that, in such a situation a case would fall within the exclusive jurisdictional ambit of the Tribunal established under the IPO Act. In this judgment also one of the disputes is with regard to a trademark regarding which there was a claim that it was co-owned by petitioner and respondent No.1 (as averred in the present *Lis*). This reported Judgement is relevant for deciding the present controversy.

8. The case law relied upon by Plaintiff's counsel is also considered. The Mushahid Case (*supra*) is about the banking matter and *inter alia* dishonouring of cheques. With regard to conflict between the two Special Laws [relating to banking transactions], it is held that when both Special Law contain overriding clause, then in the case of conflict, generally the statute later in time will prevail over the statute prior in time; though, it is held, that this is not an absolute rule, but is coupled with certain other factors, including the object, purpose and policy of both Statutes.

Honourable Supreme Court in this reported Decision, has taken the view that Financial Institutions (Recovery of Finances) Ordinance, 2001, which is later in time, will have an overriding effect on all those cases, which are covered by it and those offences are not covered, would be triable under the Offences in respect of Banks (Special Courts) Ordinance, 1984 [prior in time]. *Whereas*, the second Decision (Unreported Order of this Court), *primarily*, deals with the registration of trademark ‘**HAMZA**’, regarding which it was claimed that it is a common trademark used by all rice exporters and falls within the domain of *publici juris*. Both the Decisions are distinguishable as in the second case, the issue of exclusive jurisdiction of Tribunal under the IPO was not deliberated, *whereas*, in the Mushahid Case, Honourable Supreme Court has ruled in favour of the exclusive jurisdiction of a Special Statute, which is subsequent in time, which, in my considered view, does not support the contention of Plaintiff’s Advocate.

9. Undisputedly, IPO is subsequent in time and following the rule laid down in the aforementioned Decisions, the present *Lis* and issues agitated therein is triable by the Tribunal [in accordance with law], established and functioning under the IPO. Consequently, this Application is treated as the one for return of plaint rather rejecting it. Accordingly accepted. Plaint is returned. Office to proceed further in the matter as per Rules.

Judge

Karachi.
Dated: 08.06.2023.

Riaz / P.S.