

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C. P. No. D-6004 of 2020**

**Present:**

Ahmed Ali M. Shaikh, CJ  
and Yousuf Ali Sayeed, J

Petitioner : Muhammad Tariq through Ms. Saira Shaikh, Advocate.

Respondent No.1. : Federation of Pakistan through Qazi Ayazuddin, Assistant Attorney General.

Respondent No.2. : Registrar of Trademarks through Saleem Ghulam Hussain, Advocate.

Respondent No.3. : Mujahid Rahim through Mirza Mehmood Baig, Advocate.

Date of hearing : 21.08.2023.

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petitioner has preferred the captioned Petition under Article 199 of the Constitution, seeking to impugn an Order dated 10.11.2020 passed by the Respondent No.2, being the Registrar of Trade Marks (the “**Registrar**”), dismissing twenty (20) Notices of Opposition (TM-05) and like number of Extension Applications (TM-56) presented by the Petitioner on the ground that the same were time barred.

2. Per the Petitioner, the backdrop to the matter is that twenty (20) trademarks applications were made by the Respondent No.3 and were published in the Trade Mark Journal No.812 on 25.10.2018, with the Notices of Opposition (TM-05) and Extension Applications (TM-56) being presented by the Petitioner before the Registrar on 18.02.2019, which came to be dismissed for the aforementioned reason through the impugned Order made on 10.11.2020.
  
3. Learned counsel for the Petitioner argued that the impugned Order was bad in law as the Registrar had erred in considering the matter to be time barred since Section 28 of the Trademarks Ordinance 2001 (the “**Ordinance**”) envisaged a cumulative period of up to four (4) months for filing a Notice of Opposition. It was argued that the Registrar had proceeded mechanically, without properly deliberating on the matter so as to ascribe reasons for his finding.
  
4. Furthermore, in response to the preliminary objection of maintainability raised by the Respondents through their comments with reference to Section 114 of the Ordinance, it was argued that the right of appeal was specifically barred in the instant case by virtue of Section 123 thereof, hence the Petitioner had no alternate remedy thereunder and the Petition was thus maintainable.

5. Conversely, it was argued on behalf of the Respondents Nos. 2 and 3 that the Petitioner had invoked the constitutional jurisdiction of this court without exhausting the alternate and efficacious remedies available to him under the Ordinance, including the right of appeal conferred under Section 114 thereof. Additionally, it was pointed out that after the impugned Order, the trademarks applications of the Respondent No.3 had since been allowed, hence the matter sought to be agitated was even otherwise no longer of relevance, and if the Petitioner was aggrieved by such registration(s), a remedy was available under Section 80 of the Ordinance.
  
6. We have considered the arguments advanced in light of the material on record and the statutory framework of the Ordinance.
  
7. Turning firstly to the subject of maintainability, it falls to be considered that Sections 28, 114 and 123 of the Ordinance provide as follows:

**28. Publication, opposition proceedings and observations:** (1) When an application for registration of a trademark has been accepted. Whether absolutely or subject to conditions or limitations, the Register shall, as soon as may be after acceptance, cause the application as accepted, together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised in the Journal, and for all legal purposes, advertisement of the trademark in the Journal shall constitute sufficient notice of acceptance of the trademark;

Provided that the Registrar may cause an application to be advertised before acceptance where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do;

Provided further that where an application is advertised by reason of any special circumstances under the above proviso, the Registrar shall simultaneously notify the exceptional circumstances which led him so to do.

(2) Any person may, within two months from the date of the advertisement or readvertisement an application for registration or within such further period not exceeding two months in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, may allow, give notice to the Registrar of opposition to the registration.

**114 Appeal against the decision of the Registrar:**

(1) Save as otherwise expressly provided in this Ordinance, an appeal shall lie, within the prescribed period, against any decision of the Registrar under this Ordinance or rules made thereunder to the High Court having jurisdiction; Provided that if any suit or other proceedings concerning the trade mark in question is pending before the High Court or a District Court, the appeal shall lie to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 21, 22 or 28, it shall be open, save with the express permission of the High Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be, and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

(3) Subject to the provision of this Ordinance and of rules made thereunder, the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall apply to appeal before the High Court or a District Court under this Ordinance.

**123 Extension of time:** (1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act not being a time expressly provided in this Ordinance, whether the time so specified has expired or not, he may subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time and no appeal shall lie from any order of the Registrar under this section.

8. From a plain reading of the aforementioned provisions of the Ordinance, it is manifest that Section 28(2) expressly sets out a timeframe within which the notice of opposition is to be given, whereas Section 123 (1) applies only in respect of those matters where time has not been expressly provided for under the Ordinance. Furthermore, Section 123(2) operates so as to bar an appeal only where the Registrar has allowed an application under Section 123(1) and extended time in such unprovided cases. As such, we are of the view that the contention of the Petitioner as to the unavailability of an appeal on the touchstone of Section 123(2) is misconceived. Moreover, the aspect of opposition is rendered moot by the registrations made in favour of the Respondent No.3 under the Ordinance following the impugned Order.

9. That being so, we dismiss the Petition while leaving the Petitioner at liberty to pursue such remedies as may be available to him under the given circumstances in terms of the Ordinance, if so desired.

JUDGE

CHIEF JUSTICE

MUBASHIR