

ORDER SHEET**THE HIGH COURT OF SINDH, KARACHI**

Suit No. 420 of 2015

Before: Mohammad Abdur Rahman, J

Independent Media Corporation (Private) Limited

Versus

Mr. Sahir Ali & others

Dated: Order with signature of Judge(s)

1. For Hearing of CMA No.4441/2015
2. For further orders
(In view of the order dated 06.10.2023)
3. For examination of parties/settlement of issues

Date of Hearing : 2 March 2024

Plaintiff : Represented by Mr. Mehmood Ali,
AdvocateDefendant No.1 : Represented by Mr. Atif Chaudhry,
AdvocateDefendant No.2 : Represented by Mr. Ijaz Ahmed,
Advocate**ORDER**

MOHAMMAD ABDUR RAHMAN, J. Two Preliminary issues were framed on 6 October 2023 as to whether:

- (i) the suit is barred under Section 42, Sub-Section (b) and (c) of Section 21 of the Specific Relief Act, 1877; and
- (ii) the suit is liable to be transferred to the Intellectual Property Rights Tribunal under the provisions of Sub-Section (6) of

Section 17 of the Intellectual Property Organisation of Pakistan Act, 2012 (hereinafter referred to as the "2012 Act").

A. The Plaintiffs Suit

2. The Plaintiff is a company which works in the media industry and contends that it runs a game show and which involves the winner of that show *inter alia* being entitled to record a music album which it is assumed will be produced and marketed by the Plaintiff.

3. To develop a song for the winner to sing, the Plaintiff contends that on 22 October 2014 it entered into a "Work For Hire Agreement" with the Defendant No.1 for producing, composing and recording a song entitled "Alvida". The Plaintiff in its pleadings contends that on the basis of various contractual arrangements it has acquired good title to the copyright to that song and maintains this suit seeking the following relief:

" ... A. Declare that the Plaintiff is the lawful owner of the song "Alvida", in terms of the Agreement, dated 22.10.2014.

B. Declare that the Defendant No.1's action of selling the Song "Alvida" to the Defendant No.2 was in breach of his contractual obligations and as such illegal and unlawful;

C. Declare that the Work For Hire Agreement dated 22.10.2014 between the Defendant No. 1 and the Plaintiff Company is legally valid and binding on the Defendant No.1 and he is contractually bound to perform his obligations under the Agreement;

D. Direct the Defendant No.1 to perform and act in accordance with the Agreement dated 22.10.2014;

E. Permanently restrain the Defendant No. 2 from airing and/or distributing the song "Alvida" under its name;

F. In the meanwhile, till the disposal of this suit restrain the Defendants from airing and/or distributing the song "Alvida" under its name;

G. Cost of the suit may graciously be awarded to Plaintiff Company;

H. Grant any other consequential relief(s) as this Honourable Court may deem fit and proper in the circumstances of the case."

4. Being, in effect, a suit claiming a copyright and seeking injunctive relief to restrain an alleged infringement of a copyright, a preliminary issue was framed as to whether this Court had the requisite jurisdiction to maintain this suit or as to whether this suit was on account of the provisions of Sub-Section (6) of Section 17 of the 2012 Act, liable to be transferred to the Intellectual Property Tribunal.

B. The Jurisdiction of the High Court under the Provisions of the Copyright Ordinance 1962 and the Jurisdiction of the Intellectual Property Tribunal under the Provisions of the Intellectual Property Organisation of Pakistan Act, 2012

(i) The Jurisdiction conferred on the Intellectual Property Tribunal under the Provisions of the Intellectual Property Organisation of Pakistan Act, 2012

5. The 2012 Act received the assent of the President of Pakistan on **3 December 2012** and was published in the Gazette of Pakistan on **6 December 2012**. Sub-Section (3) of Section 1 of the 2012 Act determines the date of the commencement of that statute and clarifies that:

“ ... (3) *It shall come into force with effect from 28th August, 2012, except the provisions of section 15, 16, 17, 18 and 19 which shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.*”

6. Sub-Section (1) of Section 16 of the 2012 Act determines the manner in which “Intellectual Property Tribunals” are to be established and which clarifies that:

“ ... 16. *Establishment of Intellectual Property Tribunals:*

(1) *The Federal Government may, by notification in the official Gazette, establish as many Tribunals as it considers necessary to exercise jurisdiction under this Act, appoint a Presiding Officer for each of such Tribunal and where it establishes more Tribunals than one, it shall specify in the notification the territorial limits within which each of the Tribunal shall exercise its jurisdiction.*”

This section was brought into force by a notification bearing No.P.15(1)/2013-A-IV dated **2 December 2014** and by which notification tribunals were established by the Government of Pakistan, Law Justice and Human Rights Division and in particular a Tribunal was constituted *inter alia* having territorial jurisdiction for matters pertaining to the infringement of intellectual property rights within the city of Karachi.

7. The remaining sections were brought into force by the Government of Pakistan, Law Justice and Human Rights Division through another Notification bearing No. S.R.O 1330(I)/2015 dated **29 December 2015** and by which the Federal Government was pleased to direct that section 15 as well as sub-sections (2), (3), (8), (9), (10), (11) and (12) of section 16 and

sections 17, 18 and 19 of the 2012 Act would come into force with immediate effect.

8. The powers and jurisdiction of such Intellectual Property Tribunals are found in sections 17 and 18 of the 2012 Act and which read as hereinunder:

- “ ... **17. Powers of the Tribunals.**
- (1) *Subject to the provisions of the Act, the Tribunal shall,*
- (a) *in the exercise of its civil jurisdiction, have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908);*
- (b) *in the exercise of its criminal jurisdiction, try offences made punishable under this Act and shall, for this purpose have the same powers as are vested in a Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898);*
- (2) *The Tribunal shall in all matters with respect to which the procedure has not been provided for in this Act, follow the procedure laid down in the Code.*
- (3) *All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning or sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).*
- (4) *Subject to subsection (5), no court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of the Tribunal extends under this Act.*
- (5) *Nothing in sub-section (4) shall be deemed to affect any proceedings pending before such court immediately before the coming into force of this Act.*
- (6) *All suits and proceedings pending in any court **instituted under intellectual property laws** shall stand transferred to, and be heard and disposed of by, the Tribunal having jurisdiction under this Act. On transfer of proceedings under this subsection, the parties shall appear before the Tribunal concerned on the date previously fixed.*
- (7) *In respect of proceedings transferred to the Tribunal under subsection (6), the Court shall proceed from the stage which the proceedings had reached immediately prior to the transfer and shall not be bound to recall and re-hear any witness and may act on the evidence already recorded or produced before a court from which the proceedings were transferred (underling added).”*
- “18. Jurisdiction of the Tribunals.**
- (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 shall have exclusive jurisdiction to try any offence under intellectual property laws.”*

9. As is apparent while under Sub-Section (1) of Section 18 of the 2012 the jurisdiction of the “Intellectual Property Tribunal” is in respect of “all suits

and other civil proceedings **regarding infringement of intellectual property laws**, as per Sub-Section (6) of Section 17 of the 2012 Act, cases that were to be transferred to “Intellectual Property Tribunals” were not all pending suits and other civil proceedings regarding the infringement of intellectual property laws but were limited to those matters that were **“instituted under Intellectual Property Laws.”** It is apparent that therefore a distinction had been made by the legislature between the nature of proceedings that are to be instituted before the Intellectual Property Tribunals, once constituted, and the proceedings that were pending before any other forum and which are to be transferred to Intellectual Property Tribunals. Inasmuch after **29 December 2015**, being the date of the notification by which jurisdiction was conferred on the Intellectual Property Tribunals, only matters that had been **instituted** under the provisions of any “intellectual property laws”, as defined in Sub-Section (h) of Section 2 read with the Schedule of the 2012 Act and which were related to the infringement of an intellectual property law were to be transferred to Intellectual Property Tribunals.

(ii) Civil Remedies for Infringement under the provisions of the Copyright Ordinance, 1962 and the Specific Relief Act, 1877

10. The Copyright Ordinance, 1962 (hereinafter referred to as the 1962 Ordinance”) clearly comes within the list of statutes that have been defined as “intellectual property laws” in Sub-Section (h) of Section 2 read with the Schedule of the 2012 Act. To be able to understand what proceedings are to be transferred to the “Intellectual Property Rights Tribunals” it is therefore necessary to determine as to what kind of a *lis* relates to an **infringement of an intellectual property right** and as to whether such proceedings are **instituted** under the provisions of the 1962 Ordinance or under the provisions of Section 9 of the Code of Civil Procedure, 1908.

11. While Section 56 of the 1962 Ordinance specifies the manner in which Copyrights can be infringed, Section 57 of the 1962 Ordinance thereafter excludes various “acts” which are clarified by that section as not constituting infringement. The “civil remedies”¹ available under the provisions of the 1962 Ordinance for infringement are listed in Chapter XIII and which are clarified in the following sections of that chapter:

¹ No opinion is being given in respect of criminal offences under the 1962 Ordinance and the jurisdiction of the Intellectual Property Tribunal in this regard.

“ ...

CHAPTER XIII
CIVIL REMEDIES

... ”

60. Civil remedies for infringement of copyright

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Ordinance, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right...

60A. Special remedies for infringement of copyright, --

(1) where copyright in any work has been infringed and the owner of the copyright is unable to institute immediate regular legal proceedings for sufficient cause the owner or any other person having any interest in the copyright in the work, may apply to the Court for immediate provisional orders to prevent infringement of the copyright in such work and for preservation of any evidence relating to such infringement notwithstanding that regular proceedings in the form of a suit or other civil proceedings have not yet been instituted by the owner.

(2). The court may pass any interim orders envisaged in sub section (1) without prior notice to the defendant, if the court is satisfied that the applicant has some interest in copyright in the work and the right of the applicant is likely to be infringed, effected or prejudiced and any delay in passing such orders is likely to cause irreparable harm to the applicant or where there is a reasonable risk of evidence, either been destroyed, hidden or removed from the jurisdiction of the court or otherwise there is a likelihood or frustration of the intended proceedings if immediate action could not be instituted or there is likelihood of multiplicity of proceedings in the absence of the such orders.

(3) Where the copyright owner or any other person having any interest in the copyright has sought interim orders as provided in sub section (1) and (2), such order shall cease to have effect if a suit for infringement of copyright or other civil proceedings or not initiated within a maximum period of 30 days, and where such regular proceedings have been filed by the owner of the copyright, the provisional proceedings in respect of such a work by whosoever filed shall merge in to the regular proceedings.

(4) While exercising powers under subsection (1) and (2), the court, in case of import or export of consignment containing copies of works, may direct the custom authority in whose custody such consignment is lying for the time being to refuse release of such consignment pending decision of the matter by the court.

Provided that where interim orders are revoked or cease to have effect due to any act or omission of the applicant the court may award appropriate costs to the defendant for any injury caused.

61. Protection of separate rights

Subject to the provisions of this Ordinance, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Ordinance and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit or proceeding.

62. Author's special rights, --

(1) Notwithstanding that the author of work may have assigned or relinquished the copyright in the work, he shall have the right to restrain, or claim damages in respect of any distortion, mutilation or other

modification of the said work, or any other action in relation to the said work which would be prejudicial to his honor or reputation.

(2) The right conferred upon an author of a work by sub-section (1) may be exercised by the legal representatives of the author...

65. Jurisdiction of court and limitation, --

*(1) Every suit or other civil proceeding **regarding infringement of copyright** shall be instituted and tried **in the Court of the District Judge** which shall ordinarily be decided within a period of twelve months:*

Provided that, where the person whose copyright in a work has been infringed does not intend to institute a suit or proceeding in the Court of the District Judge, he may, by petition in the prescribed manner, refer the matter to the Board for decision.

(2) Where a petition has been filed under the proviso to sub-section (1), the Board, or a Committee consisting of the Chairman and not less than two members of the Board as the Chairman may appoint, shall consider the matter, and after giving the parties an opportunity of being heard, pass such order as it thinks fit.

(3) The decision of the Committee referred to in sub-section (2) shall be deemed to be the decision of the Board.

(4) Where a matter has been referred to the Board under the proviso to subsection (1), no court shall hear, try or entertain any suit or proceeding relating to that matter.

(5) The decision of the Board shall, subject to the provisions as to appeal, be final, and shall be executed in the manner provided in section 79."

12. Sub-Section (1) of Section 60 of the 1962 Ordinance clarifies that where ever a copyright is infringed, the owner of a copyright will, **unless specifically excluded by any provisions of the 1962 Ordinance**, be entitled to "all such remedies by way of injunction, damages, accounts and otherwise as are or may be **conferred by law** for the infringement of a right." To my mind the only law that confers such a right to a Plaintiff to claim a remedy for "infringement of a right", in this jurisdiction, is the Specific Relief Act, 1877 and it would therefore seem that remedies for "infringement of a right" being conferred by the Specific Relief Act, 1877 are therefore to be regulated by that statute. It would consequently follow that the real purpose of Sub-Section (1) of Section 60 of the 1962 Ordinance was not to confer a right of institution of a claim through that section but rather on account of the expression "***except as otherwise provided by this Ordinance***" to limit the remedies available under the Specific Relief Act, 1877 in terms of exceptions to obtain such relief as are contained in the 1962 Ordinance. That being the case I am of the opinion that the remedies that are available to the Plaintiff as mentioned in Sub-Section (1) of Section 60 of the 1962 Ordinance cannot be considered to being instituted under that statute and

must be considered to be proceedings instituted under Section 9 of the Code of Civil Procedure, 1908.

13. By contrast, Section 60 A of the 1962 Ordinance confers a special right whereby a Plaintiff can “**apply to the Court for immediate provisional orders to prevent infringement of the copyright in such work and for preservation of any evidence relating to such infringement not with standing that regular proceedings in the form of a suit or other civil proceedings have not yet been instituted by the owner.**” Quite clearly the remedy that is available under Section 60 A of the 1962 Ordinance is distinct from the remedies available to a Plaintiff under the provisions of Specific Relief Act, 1877 and hence to my mind the right to such a remedy cannot be considered to having been instituted under the Specific Relief Act, 1877 and must be considered to have been instituted under the provisions of Section 60 A of the 1962 Ordinance.

(iii) Jurisdiction in respect of a lis pertaining to infringement of a Copyright

14. Section 65 of the 1962 Ordinance regulates the jurisdiction for instituting a *lis* in respect of the infringement of a copyright and states that wherever any *lis* is maintained for “infringement of copyright” in the civil jurisdiction it is to be instituted and tried in the “**Court of the District Judge**”.² The Supreme Court of Pakistan has examined this Court’s jurisdiction to entertain civil matters in its original jurisdiction in the decision reported as **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**³ and wherein the Supreme Court of Pakistan made a distinction between the status of a court and its jurisdiction holding that:

“ ... *Therefore, even prior to the Order of 1955, this Court, in light of section 14 of the Act of 1926, was a "High Court" merely exercising the original civil jurisdiction for the District of Karachi. As insisted upon by the learned counsel for the appellants, we are convinced by the argument that in light of the above, the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court, therefore the two cannot be equated by any stretch of imagination.*”

The Status of this Court as being a “High Court” constituted under Sub-Article (1) of Article 175 of the Constitution of the Islamic Republic of

² This order does not determine where the jurisdiction of the Copyright Board referred to in the proviso to Sub-Section (1) of Section 65 of the 1962 Ordinance has been overridden by the provisions of Sub-Section (1) of Section 18 of the 2012 Act.

³ 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan.**

Pakistan, 1973 and not a “District Court” having been clarified by the Supreme Court of Pakistan, the secondary question is as to whether when exercising its original jurisdiction, the High Court of Sindh at Karachi exercises its jurisdiction as a High Court or that of a District Court? This question was also unequivocally answered by the Supreme Court of Pakistan in **Searle IV Solution (Pvt.) Limited v Federation of Pakistan**⁴ wherein it was held that:

“ ... *The question of the status of the Single Bench of the Sindh High Court at Karachi, stands conclusively decided in the judgment of Province of Sindh v. Haji Razzaq judgment (supra) which relies almost entirely on Justice Waheeduddin Ahmed, J's judgment in Firdous Trading Corporation v. Japan Cotton and General Co. Ltd. (supra) wherein he had in unequivocal words stated that:*

*"I have not the slightest doubt on the language of section 3 of Sindh Act, 1926 and the definition of "District" in section 2(4) of the Civil Procedure Code, **that it was exercising District Court jurisdiction in contradistinction to the ordinary original civil jurisdiction of the High Court.** In my opinion the mere fact that the Sindh Chief Court later on was included within the definition of High Court under section 219 of the Government of India Act, did not change the nature of this jurisdiction."*

This view, being the conclusive view of this Court ever since Haji Razzaq's case (supra) as the settled law on the matter shall prevail."

By this decision the Supreme Court of Pakistan has clarified that while this Court continues to have the status of a “High Court” constituted under Sub-Article (1) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 it has the power to exercise jurisdictions conferred on it in accordance with Sub-Article (2) of Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973 i.e. by “the Constitution or by or under any law.” It would naturally follow that under Section 7 read with Section 24 of the Sindh Civil Courts Ordinance, 1962 the original jurisdiction that is being exercised by this court while entertaining a Suit is the jurisdiction of the District Court.

15. However, in respect of a suit maintained for the infringement of a copyright, the language of Section 65 of the 1962 Ordinance does not confer jurisdiction to a “District Court,” rather it confers jurisdiction to “the Court of the District Judge.” It would therefore seem that in respect of issues pertaining to the infringement of a copyright the jurisdiction has been specifically removed from the Civil Judge or the Senior Civil Judge of a

⁴ 2018 SCMR 1444. This case was relied upon in an unreported Division Bench judgement of this Honorable Court, dated 12.03.2021, passed in C.P. No. D-1465 of 2021: **Ahmed & Kamran Trader (Pvt.) Limited v Federation of Pakistan.**

District Court and specially conferred on the District Judge. As the jurisdiction that I am exercising is that of a District Court, clearly I am exercising the jurisdiction of either a Civil Judge or a Senior Civil Judge and not that of a District Judge. I am even clearer that while the jurisdiction exercised by this Court in respect of entertaining a suit is that of a District Court, I cannot extend that proposition to state that while exercising my jurisdiction over a *lis* pertaining to the infringement of a copyright, I can be considered to be holding the “Court of [a] District Judge.” As such I am of the opinion that when this Suit was presented it should have been presented before the Court of a District Judge and which was therefore incorrectly presented before this Court and which has therefore been instituted before the wrong forum.

(iv) Matters Commenced before a Court for infringement of a Copyright being transferred to the Intellectual Property Tribunal.

16. The provisions of Section 17 of the 2012 Act having been brought into force by virtue of Notification No. S.R.O 1330(I)/2015 dated **29 December 2015**, it would therefore follow that on account of the non-obstante clause contained in Section 39 of the 2012 Act, the provisions of that statute including, but not limited to, Sub-Section (1) of Section 18 of the 2012 Act are, to the extent of any inconsistency between the 2012 Act and the 1962 Ordinance, to prevail over the provisions of 1962 ordinance. Clearly such inconsistency exists as in respect of a *lis* to be maintained in respect of an infringement of a copyright, as Sub-Section (1) of Section 65 of the 1962 Ordinance confers the jurisdiction of entertaining such a *lis* on the “Court of the District Judge” while under Sub-Section (1) of Section 18 of the 2012 Act confers the same jurisdiction on the Intellectual Property Tribunal. The expression “inconsistent” has been defined by the Supreme Court of Pakistan in the decision reported as **Chittaranjan Cotton Mills Limited vs. Staff Union**⁵ and wherein it was held that:

“ ... *The provisions of the two statutes are, in my opinion not only dissimilar but inconsistent and incompatible. It is true that mere dissimilarity may not be enough to establish inconsistency, inconsistency involves incompatibility in substance and spirit and not merely in form. As defined in Black’s Law Dictionary, “inconsistent” means, inter alia, “mutually repugnant so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other”*

⁵ PLD 1971 SC 197; a similar definition has been given by the Supreme Court of Pakistan in the decision reported as **Province of West Pakistan and another vs. Mahboob Ali and another** PLD 1976 SC 483

To my mind where a statute gives the same jurisdiction to two different courts, they are clearly inconsistent one with the other. The inconsistency being established, on account of the non-obstante clause in Section 39 of the 2012 Act, the provisions of Sub-Section (1) of Section 18 of the 2012 Act must prevail over the provisions of Sub-Section (1) of Section 65 of the 1962 Ordinance. As such from 29 December 2015, any *lis* in respect of an infringement of a copyright had to be instituted before the Intellectual Property Tribunal and not before any other forum.

17. On the basis of the foregoing I am of the opinion that:

- (i) in respect of matters pertaining to the infringement of a copyright that were instituted on or after **29 December 2015** before any court other than the Intellectual Property Tribunal, the same having been instituted in a court lacking jurisdiction, the *lis* would be liable to be returned under Order VII Rule 10 of the Code of Civil Procedure, 1908;
- (ii) in respect of matters that were instituted before **29 December 2015** in a court of the District Judge and which were instituted under Section 60A of the 1962 Ordinance, such proceedings would, in terms of Sub-Section (6) of Section 17 of the 2012 Ordinance, having **been instituted under the provisions of an Intellectual Property Law** would by virtue of Sub-Section (6) of Section 17 of the 2012 Act be transferred to the Intellectual Property Tribunal;
- (iii) in respect of all other proceedings instituted before the Court of the District Judge before the 29 December 2015 such suits would, as per Sub-Section (6) of Section 17 of the 2012 Act, not be transferred to the Intellectual Property Tribunal and would continue to be tried by the Court of the District Judge.

C. Opinion as to the maintainability of this Suit

18. For the foregoing reasons this Court's jurisdiction having been excluded by the provisions of Sub-Section (1) of Section 65 of the 1962 Ordinance and this Suit having been instituted prior to the issuance of the Notification No. S.R.O 1330(I)/2015 dated **29 December 2015**, I do not have the requisite jurisdiction to entertain this Suit. The Plaint is therefore

returned to the Plaintiff under the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908.

JUDGE

16 March 2024