

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omer Sial

High Court Appeal No. 168 of 2022

Shahryar
Versus
Sheikh Muhammad Iqbal & others

Date of Hearing: 21.03.2024

Appellant: Through Mr. Muhammad Saleem Mangrio
Advocate.

Respondents No.1 & 2: Through Mr. Kazim Raza Abbasi Advocate.

Respondents No.3: Through Ms. Afsheen Aman Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- A suit for declaration, permanent injunction and damages was filed by the appellant to assert his right over registered trademark “BLACKCLUBS” as against the respondents, arrayed as defendants in the suit. The suit was filed to restrain and restrict respondents No.1 and 2 from importing “V-Belts” bearing the trademark “BLACKCLUBS”. Along with the suit the appellant has moved injunction application seeking such restraining orders not only against the respondents No.1 and 2 but also against respondent No.3 i.e. Director IPR Enforcement (Trademark Registry Copyrights) from releasing goods being imported by the respondents i.e. respondents No.1 and 2.

2. It is appellant’s case that the subject goods are infringing the trademark of the appellant; he (appellant) was able to obtain ad-interim order but later on consideration of facts disclosed in the written statement the interim injunctive order was recalled and the injunction application along with other applications as follow up of the interim

injunction were dismissed whereas respondents No.1 and 2's application under order XXXIX Rule 4 CPC was allowed hence this appeal.

3. We have heard the learned counsel and perused material available on record.

4. It appears that while the instant suit wherein impugned order was passed was pending a CP No.D-6264 of 2021 was also filed by the appellant with almost overlapping reliefs as claimed in the suit. The reliefs as claimed in the petition are as under:-

- a. *Declare that the Trade Mark of the respondent No.3 is violation of the Trade Mark of the and Copy right of petitioner.*
- b. *Declare that the entire instance taken by the Director (IPR) Enforcement and delaying without any reason is the violation of IPR rules and Trade Mark Ordinance 2001.*
- c. *Declare that the respondent No.4 violating the Trade Mark right of the petitioner and directing to respondent No.2/IPR to take action and pass an order as per law and avoiding to take action is contravention of principle of natural justice.*
- d. *Direct the respondents particularly respondent No.2 to immediately resolve all the issues.*
- e. *Pending adjudication, the respondents may kindly be restrained from taking any adverse action against the petitioner.*
- f. *Grant any other reliefs....*
- g. ...

5. The petition was however disposed of with the directions to the respondent No.3 (respondent No.2 in the said petition) to pass a speaking order on the application made by the appellant (petitioner in the said petition) strictly in accordance with the provisions of Trademark and Copyright laws keeping in view intent and framework of these legislations in mind within three weeks preferably.

6. Record shows that in compliance of the directions, respondent No.3 passed Order 1/2022 dated 14.03.2022 whereby the application of the appellant was dismissed. Aggrieved of it, it appears that appellant yet again filed Constitutional Petition D-1850 of 2022 which up until

passing of the impugned order was pending. The customs officials are under the obligation to overview such infringement as claimed by virtue of Chapter XXVIII Rule 678 to 686 of The Customs Rules 2001.

7. Needless to mention that before filing of the suit the appellant has already elected a forum of litigation i.e. customs hierarchy wherein he sought enforcement of his rights as claimed by virtue of law referred above. Learned Single Judge took notice of this that these facts were not disclosed at the time when ad-interim order was obtained on 15.06.2021. Later in time in the aforesaid petition No.6264 of 2021 the plaintiff obtained an order for the respondent No.3 to decide his application, which was pending adjudication. The respondent No.3 was then for the reasons recorded in its order, referred above, dismissed the application as respondent No.3 found that the goods were not infringing the plaintiff's trademark and were imported under the registered trademark of respondent No.1 which was prior in time. Once the appellant has surrendered himself before the said statutory forum for adjudication having jurisdiction, then only remedial hierarchy should have been followed in chain and a different jurisdiction for the similar or identical relief cannot be invoked as it would be violative of doctrine of election¹.

8. The appellant has already challenged the order of respondent No.3 before a forum he has elected hence to circumvent the findings of respondent No.3, being a judicial forum as invoked by the appellant, the jurisdiction of this Court on the original side cannot be invoked for an injunction. The order of the respondent No.3 in the follow up of its jurisdiction could well be agitated before a proper forum, though apparently the appellant in his own wisdom has challenged it separately by filing a writ petition No.1850 of 2022, wherein it is prayed by the

¹ PLD 2018 SC 628 (Trading Corporation of Pakistan v. Dewan Sugar Mills)

appellant that the Order No.1 of 2022 dated 14.03.2022, as referred above, be vacated with ancillary prayers as to the subject trademark. In this petition the appellant has also prayed to hold the subject consignment till disposal of Suit No.1367 of 2021, the very suit from which this appeal has arisen. The order of respondent No.3 on application filed by appellant is not a subject matter of suit before learned Single Judge.

9. The impugned order of the learned Single Judge has considered the three ingredients i.e. prima facie case, balance of inconvenience and irreparable loss and appears to be a well-reasoned order hence no interference is required. Consequently instant High Court Appeal is dismissed along with pending applications.

Dated: 29.03.2024

J U D G E

J U D G E