

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No. 741 of 2019
[Muhammad Asif Kapadia versus Muhammad Shafi Kapadia]

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

1. For hearing of CMA No. 2856 of 2020.
2. For hearing of CMA No. 6400 of 2019.

25-02-2025

M/s. Amna Salman Saifullah Sachwani, Advocates for the Plaintiffs.

Raja Qasit Nawaz, Advocate for the Defendants.

Adnan Iqbal Chaudhry J. - This is a suit for injunction against trademark infringement and the tort of passing-off. By sections 17 and 18 of the Intellectual Property of Pakistan Organization Act, 2012 [IPOP Act], exclusive jurisdiction to try a suit for infringement/violation of the Trade Marks Ordinance, 2001 [TM Ordinance], including trademark infringement, was bestowed on the Intellectual Property Tribunal [IP Tribunal]. It was held by the Supreme Court in *Muhammad Multazam Raza v. Muhammad Ayub Khan and others* (2022 SCMR 979) that even where a suit for trademark infringement additionally prays for relief against passing-off, the suit is still triable by the IP Tribunal.

Learned counsel submit that the suit should nonetheless be tried by this Court as applications (J.M. No. 13 & 14/2020) under sections 73 and 80 of the TM Ordinance for revocation and invalidation of registration of the same trademark are also pending before this Court. The submission is misconceived. While sub-section (4) of sections 73 and 80 of the TM Ordinance had allowed those applications to be brought to the High Court if proceedings concerning the same trademark were pending before the High Court, the said provisions do not cater *vice versa* for a suit for trademark infringement.

Sections 17 and 18 of the IPOP Act came into effect from 29-12-2015 *vide* SRO No.1330(I)/2015. Sub-section (6) of section 17 required that all such suits pending at the time before any Court

should be transferred to the IP Tribunal. This suit was not pending at the time and was brought much after in 2019 when this Court did not have jurisdiction to entertain such suit. Therefore, the provision for transfer does not attract to this suit. Resultantly, the plaint is returned under Order VII Rule 10 CPC for presentation before the IP Tribunal. In doing so the Plaintiff may plead exclusion of the period spent before this Court under section 14 of the Limitation Act, 1908.

JUDGE

*PA/SADAM