

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**M. A. No. 32 /2015**

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DATE

ORDER WITH SIGNATURES OF JUDGE(S)  
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1. For orders on CMA No. 5336/2015.
2. For orders on office objections.
3. For orders on CMA No. 5337/2015
4. For hearing of main case.

**16.05.2016**

Mr. Abdul Hameed Iqbal, advocate for the appellant.

The counsel contends that he filed an application for registration of trade mark on 08.06.2009 after fulfilling all the requisite formalities, the said trade mark was advertised in the Trade Mark Journal No. 712. An opposition was filed against the said trade mark by filing TM-5 on 15.03.2012, which was duly responded by filing TM-6 by the present appellant on 12.07.2012. The counsel contends that all the formalities have complied with and after hearing the parties and considering the material on record, the Registrar of Trade Mark passed a short order (at page 527), in terms of which, he allowed the opposition filed against his trade mark. In terms of the instant appeal, the appellant is impugning the instant short order only, however, when he was posed with a question as where are the detailed findings of the Registrar in the instant Opposition No. 497/2012, the counsel submitted that though he has made an application in this regard on appropriate Form TM-46 sometimes in August, 2015, however, the Registrar is refusing to provide his findings and a copy of the detailed judgment, whereby he reached to the conclusion that his trade mark did not qualify to be registered and failed in the opposition proceedings. The counsel submits that this request made by him to the Registrar is countered by the argument posed by the Registrar that the instant application on T.M-46 is time-barred, therefore the Registrar is not legally bound to provide a detailed speaking order. In reliance of these assertions, the counsel took us to Rule 85 of the Trade Mark Rules, 2004. A

perusal of the said rule shows that the period stipulated for filing an appeal against the order of the Registrar is provided as two months, notwithstanding therewith, neither the Trade Mark Ordinance, 2001 nor the Trade Mark Rules, 2004 prohibits the Registrar from giving a speaking order laying down the grounds of refusal or acceptance of any trade mark in the course of opposition. It is impertinent to the fact that whether the party intends to file an appeal or not, the Registrar is bound to give reasons of his acceptance or refusal of the trade mark in all cases. While, through the instant appeal, a prayer is made for setting aside of the said short order of the Registrar. I am of the view, that it cannot be achieved from filing this Misc. Appeal, because, in my view, by failing to provide grounds and reasons to the appellant of his arriving to the conclusion and as provided by him in the short order of 14.01.2015. In the circumstances, the instant Misc. Appeal is converted into a Constitutional Petition, as I am of the view that it is a constitutional right of the appellant to have and provided him with such a speaking order, whether or not he wishes to challenge it in an appeal. Having been converted into a Constitutional Petition, I order the Registrar to pass a speaking order, listing all the reasons and grounds, which he had in support of allowing the Opposition No. 497/2012 within 30 days hereof. Having been provided with the above detailed order, the counsel contends that thereupon he would decide whether to appeal the said order or not or to seek whatever legal remedies available to him.

The instant appeal alongwith the pending applications, stands disposed of in terms of the above order.

**JUDGE**