

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 1435 of 2017

DATE ORDER WITH SIGNATURES OF JUDGE(S)

- For hearing of CMA No.9060/2017

08.06.2017

Ms. Tabassum Hashmat, Advocate for the Plaintiff
Khawaja Shamsul Islam, Advocate for Defendant Nos. 3 & 4
alongwith Mr. Imran Taj, Advocate
Mr. Faqir Liaquat Ali, DGM PEMRA
Mr. Kaleem Tareen, AD (Law) PTA

Learned counsel for the Plaintiff submits that the Plaintiff as a part of its regular business imports mobile phones under brand Q-Mobile from China after having the appropriate model's Type Approved by PTA. In support of this contention, the counsel placed reliance on various documents, which primarily belong to three categories; being (1) goods declaration; (2) PTA Certification of IMEI numbers; and (3) Type Approval issued by PTA. The case of the Plaintiff is that the Plaintiff only imports mobile phones on the Type Approval and IMEI numbers having been provided by the PTA. The cause of action seemingly arose when an alleged news item was carried by Defendant Nos. 3 & 4 where they broadcasted a news that Customs Authorities in connivance with Q-Mobile Company were violating national laws by importing mobile phones without IMEI numbers. Full text of the said news item is reproduced as under:-

کراچی: کسٹم حکام اور کیو موبائل نے قانون نافذ کرنے والے اداروں کے احکامات کی دھجیاں اڑادیں
کراچی: بغیر ای ایم آئی نمبرز کے کیو موبائل کی کلنیرنس کا سلسلہ جاری
کراچی: چین سے درآمد کیو موبائل کی کلنیرنس کے لئے قانون نافذ کرنے والے اداروں اور سی پی
ایل سی نی ای ایم آئی نمبر لازمی قرار دیا تھا
کراچی: نیشنل ایکشن پلان میں بھی چین سے درآمد موبائل فون کے بر ٹیے پر الگ الگ ای ایم آئی
نمبر درج ہونے منظوری دی گئی تھی
کراچی: نیشنل ایکشن پلان میں بغیر ای ایم آئی نمبرز کے کوئی بھی موبائل کلنیر کرنا غیر قانونی
قرار دیا گیا تھا
کراچی: ای ایم آئی نمبرز نہ ہونے کی وجہ سے قانون نافذ کرنے والے اداروں کو دہشت گردوں اور
جرانم پیشہ افراد کا سراغ لگانے میں مشکلات کا سامنا کرنا پڑتا ہے
کراچی: بغیر ای ایم آئی کے کلنیر ہونے والے کیو موبائل جرانم پیشہ افراد کی اولین پسند ہیں، رپورٹ
کراچی: کسٹم حکام کی ملی بھگت سے کلنیر ہونے والے کیو موبائل کے ای ایم آئی نمبر ای اے جناح
روڈ کی ایک مارکیٹ میں لگانے جاتے ہیں، ذرائع
کراچی: ای ایم آئی نمبر نہ ہونے کی وجہ سے کتنے موبائل سیٹ درآمد کئے گئے اس بارے میں بھی
پتہ نہیں لگایا جاسکتا، کسٹم حکام

Learned counsel for the Plaintiff submitted that the news was false and fake since all the imports of the Plaintiff are made after compliance of the applicable PTA approvals, therefore, the instant false and slanderous news has caused damage to the reputation and goodwill of the Company and for such defamation this suit for damages has been filed alongwith which the instant application which is heard today was filed seeking restraining orders against the Defendant Nos. 3 & 4 from harassing, blackmailing and telecasting forged and fabricated news on their TV channels in any manner whatsoever till the disposal of the case.

When the matter was heard on 02.06.2017, an *ex parte* interim order was passed by this Court in terms of which the Defendant Nos. 3 & 4 were restrained from airing, showing and broadcasting news items about the Plaintiff's Q-Mobile phones, which were tentatively considered as libelous in nature and tainted with injurious falsehood. The instant application is heard at length today. While the officials appearing for the Defendant Nos. 1 and 2 sought time to file suitable replies to the instant application, claiming copies of the instant suit alongwith above referred application that have not been provided to them, the learned counsel for the Defendant Nos. 3 & 4 argued the matter at length. Per counsel, the instant application is inherently defective of not only on account of Section 8 of the Defamation Ordinance, 2002 which requires fourteen days' notice be given to the entity against whom the defamation is alleged before any action is instituted. Additionally Court's attention was also drawn to Page No.115, which is an application moved by the Plaintiff itself against Defendant Nos. 3 & 4 to Chairman PEMRA (Defendant No.1), where similar allegations have been made. The counsel contended that the Plaintiff cannot seek two remedies at the same time, while at one hand having filed the complaint under PEMRA laws and additionally seeking damages as well as injunctive relief before this Court through the instant suit/application. In this regard the counsel referred to 2016 PLD Sindh 11 to support his contention that in the given circumstances suit is not maintainable as alternate remedy is being availed wherein complaint before PEMRA is pending and on the next date the said complaint is to be taken up by PEMRA's COC.

Be that as it may, ignoring the inherent defects of the instant application moved by the Plaintiff, the suit at hand cannot be adjudicated without making Customs Authorities a party since the news item clearly referred to the unholy alliance of the Plaintiff with Customs Authorities. Counsel for the Plaintiff undertakes to file amended title by making Federation of Pakistan and respective Customs Collectrates as necessary parties.

Now coming to the nuts and bolts of the issue at hand, it is not the first time when cases/reports have been filed/surfaced against the Plaintiff allegedly importing mobile phones without having proper IMEI numbers embossed thereon or programed therein before the date of import of the respective mobile phones. Various random documents showed as G.D as well as PTA approval when even microscopically examined could not show any nexus of a G.D with PTA's prior approval specifying details of the mobile imported with specific IMEIs.

In the given circumstances when a G.D fails to specify IMEI numbers of the imported mobile phones, it is extremely difficult (if not impossible) to ensure that the compliance of laws with regard to the import of mobile phones only with IMEI has been made. The Hon'ble Supreme Court in its judgment dated 29.11.2013 passed in Suo Moto Case No. 16 of 2011 called upon PTA to ensure that to deter terrorism in the country, wherein mobile phones were held to play a vital role, ordered that mobile phones only be imported with appropriate IMEI given thereon.

The scale of illegality unearths, when as an example, attention is drawn to Plaintiff's G.D attached on Page 21 dated 25.05.2017 and the accompanied IMEI Certificate reproduced on Page 23, where at Serial No.1 for the Model EC0100, 10,200 mobiles were given IMEI numbers starting from 359011080013158 to 359011080034501. It is alarming to note while the quantity of the imported phones is only 10,200, however IMEI numbers given are 21,343 meaning thereby there is no correlation between the quantity of imported phones with the IMEI numbers given by PTA, which is in absolute violation of the Apex Court's judgment. It is also alarming to note that while PTA grants IMEI Certification, Customs Authorities are given the task to perform physical check of the contents of the shipment and to ensure that the IMEI details are reflected as part of the PTA Certificate prior to release of the

shipment. This delegation of responsibilities from PTA to Customs Authorities is never cross checked resulting in the alleged allegation that a number of mobile phones leave Customs Authorities without proper IMEI embossed thereon or programmed therein.

With regard to the merit of the instant CMA as mentioned in the foregoing, not only the instant application is hit by Section 8 of the Defamation Ordinance, 2002 (supra), as well as, by PEMRA laws for which an alternate remedy has already been availed. Additionally where the Plaintiff has failed to substantiate its claim that all of its mobile phones are imported with proper IMEI, these acts are not only violative of the Apex Court's judgment, they also raise antennas of watch dogs and people at large have the right to know and take appropriate remedial measures to safeguard their lives and liberties. In the given circumstances, Plaintiff has completely failed to connect the allegations leveled in the plaint and the relief sought in this injunction application. While right of freedom of speech enshrined in Article 19 and right to information made part of the Constitution in 2010, people at large have right to know about the illegalities committed by individuals which could pose danger to their lives and liberties. It is for these reasons, no case is made out by the Plaintiff which could entitle it the relief claimed through the instant application, accordingly the earlier granted interim stay by this Court on 02.06.2017 is recalled and the instant application is dismissed as being meritless.

JUDGE