

IN THE HIGH COURT OF SINDH AT KARACHI

Date of hearing	Order with signature of Judge
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M.A. No. 28 & 29 of 2013.

Appellant : Sobia Amir through Mirza Mehmood Baig, advocate.

Respondents : Registrar of Trade Mark & another through Mr. Saleem Ghulam Hussain, advocate.

Date of hearing : 15.02.2021

Date of decision : 01.03.2021

Salahuddin Panhwar, J:- By the dint of this order, I am going to decide the challenge, made by the respondent, against competence of the captioned appeals, with reference to competence and jurisdiction.

2. The challenge to competence of above appeals before this Court has been made with claim that this Court has no jurisdiction to entertain the captioned above M.A(s) which, per respondent, were to be filed before the Lahore High Court. For this reference has been made to the Section 114 of the *Trade Marks Ordinance, 2001*. As per Rule 131 (2) of "The Trade Marks Rules, 2004", if the hearing has taken place at the Branch Registry, the decision in respect thereof shall be pronounced at the Branch Registry. Here, a direct referral to Section 114 of the Ordinance, being conducive, is made which reads as:-

"114. Appeal against the decision of the registrar:-

"(1) Save as otherwise expressly provided in this Ordinance, an appeal shall lie, within the prescribed period, against any decision of the Registrar under this Ordinance or rules made thereunder to the High Court having jurisdiction;

Provided that if any suit or other proceedings concerning the trade mark in question is pending before the High Court or a District Court, the appeal shall lie to that High Court or, as the case may be, to the High court within whose jurisdiction that District Court is situated."

3. The subsection (1), *prima facie*, contains the phrase '*having jurisdiction*' which was / is sufficient to safely conclude that things have not been left at the discretion or wish of the parties *aggrieved*. An appeal against decision of the Registrar, no doubt, shall lie to the **High Court** but by use of phrase '**High Court having jurisdiction**' this has, *prima facie*, been of much significance as well to clarify that it shall *only* be that '**High Court**' in whose jurisdiction the Registrar, recording impugned order, is functioning. The providing clause of said section though provides an *exception* to subsection (1) but, in fact, is in affirmation to said subsection else there would have been no *purpose* for giving *providing clause*. Per providing clause, if any suit or other proceedings concerning the trade mark in question (disputed in order of Registrar) is pending then the jurisdiction to challenge such order of the *Registrar* shall lie with **High Court**, where matter is subjudice, or under whose jurisdiction the District Court is located, if matter is pending before **District Court**. The view is guided by the case, reported as PLD 1993 SC 123 (relied by learned counsel for respondent) wherein it is held as:-

"5. We are more impressed about the second contention raised on behalf of the appellants to the effect that Lahore High Court has no jurisdiction on the ground that Registrar's office is at Karachi and proceedings were taken before him at Karachi, hence High Court of Sindh at Karachi had jurisdiction. In this context section 76 of Trade Marks Act of 1940 contemplates that appeal from the decision of the Registrar shall lie to the High Court having jurisdiction. Our attention has been drawn to the case of Abdul Ghani Ahmed v. Registrar, Trade Marks, Government of India reported in AIR 1947 Lahore 171, in which person residing in Lahore made an application for registration of trade mark to Registrar of Trade Marks at Bombay which was refused and he filed appeal before the Lahore High Court. It was held that Bombay High Court had jurisdiction and not Lahore High Court for the reason that mere residence of a petitioner would not in the absence of statutory provision, invest a Court with jurisdiction as there is no provision of this kind either in the Trade Marks Act or in any other Act in respect of appeals from the decision of the Registrar of Trade Marks. As against this learned counsel for the respondents argued before us that Registrar Trade Marks has jurisdiction all over Pakistan and also he has an office set up in Lahore, therefore, High Court at Lahore also had jurisdiction. When asked categorically whether proceedings in respect of trade mark were held at Karachi or at Lahore, the reply was that proceedings took place at Karachi and order passed by the Registrar and impugned in the appeal was also passed at Karachi. In support of his contention learned counsel for the respondents cited before us the case

of Al-Iblagh Limited v. Copyright Board, Karachi and others 1985 SCMR 758. It is held in the reported case that any order passed by the Board or proceedings taken by it in relation to any person in any of the four Provinces in Pakistan gives jurisdiction to the High Court of the Provinces in whose territory such person resides. Reported case is distinguishable for the reason that language used in section 77 of the Copyright Ordinance, 1962 pertaining to appeals against the order of the Board is worded differently from section 76 of the Trade Marks Act of 1940 inasmuch as in section 77 of the Copyright Ordinance it is specifically mentioned that appeal would lie to the High Court within whose jurisdiction appellant actually and voluntarily resides or carries on business or personally works for gain. **We, therefore, approve the view expressed in the case of Abdul Ghani Ahmed (supra) and hold that in the instant case appeal was competent before High Court of Sindh at Karachi, as order of the Registrar, Trade Marks impugned in the appeal was passed at Karachi and proceedings also took place at Karachi.**

as well he has relied upon PLD 1989 Peshawar 197, paragraph No.4 being relevant is that:

“4. Subsection (1) of section 76 of the Act clearly lays down that an appeal shall lie from the decision of the Registrar under the Act or the rules made thereunder to the High Court having jurisdiction **It shall thus be seen that only that High Court would be competent to hear the appeal which has jurisdiction in the matter.** It was common knowledge between the parties that there is no office of the respondent No.1 in Peshawar and during the days of these proceedings there was only one office of the respondent No.1 and that was situate at Karachi. No order was made by the respondent No.1 within the territorial jurisdiction of this High Court. Although the principle place of business of the appellant is situate in District Mardan within the territorial jurisdiction of this Court yet no proceedings were carried out within the jurisdiction of this High Court. **The use of the words "having jurisdiction" after the words "High Court" in subsection (1) of section 76 of the Act is a very significant matter. The only connotation of the words "having jurisdiction" would be that only that High Court would have jurisdiction to hear the appeal within whose territorial limits the order impugned in appeal was made.**

4. In the case of M/s Al-Iblagh Limited, Lahore, Vs. The Copyright Board, Karachi and others [1985 SCMR 758], it is contended that:

“The rules laid down in the said case would, we think, be applicable also in the circumstances of this case, The Central Government has set up a Copyright Board for the whole of Pakistan and it performs functions in relation to the affairs of the Federation in all the Provinces. Hence, any order passed by it or proceedings taken by it in relation to any person in

any of the four Provinces of Pakistan would give the High Court of the Province, in whose territory the order would affect such a person, jurisdiction to hear the case.”

5. In the above case, hearing before the Board was held at Lahore, however, final order was passed at Karachi, hence, M/s. Al-Iblagh filed appeal at Lahore but that was dismissed on the ground of jurisdiction. Accordingly, apex court held that High Court of Sindh as well as Lahore High Court Lahore had concurrent jurisdiction.

6. In the case of Reckitt & Colman (U.K.) PLC vs. Sheikh Soap Factory and another [PLD 1993 Supreme Court 129], wherein it is observed that:-

.....proceedings took place at Karachi and order passed by the Registrar and impugned in the appeal was also passed at Karachi. In support of his contention learned counsel for the respondents cited before us the case of Al-Iblagh Limited v. Copyright Board, Karachi and others 1985 SCMR 758. It is held in the reported case that any order passed by the Board or proceedings taken by it in relation to any person in any of the four Provinces in Pakistan gives jurisdiction to the High Court of the Provinces in whose territory such person resides. Reported case is distinguishable for the reason that language used in section 77 of the Copyright Ordinance, 1962 pertaining to appeals against the order of the Board is worded differently from section 76 of the Trade Marks Act of 1940 inasmuch as in section 77 of the Copyright Ordinance it is specifically mentioned that appeal would lie to the High Court within whose jurisdiction appellant actually and voluntarily resides or carries on business or personally works for gain. **We, therefore, approve the view expressed in the case of Abdul Ghani Ahmed (supra) and hold that in the instant case appeal was competent before High Court of Sindh at Karachi, as order of the Registrar, Trade Marks impugned in the appeal was passed at Karachi and proceedings also took place at Karachi.**

The above legal position leave no *exception* that the party, aggrieved of an order of Registrar Trade Mark, would be left with no discretion in choosing the **‘High Court’** (appellate forum) with reference to his place of residence or business but shall have to challenge such decision before that **High Court** *only* under whose jurisdiction such Registrar is functioning.

7. Undeniably, in M.A. 28 of 2013, hearing of Opposition No. 38/2012 against the registration of trade mark “SOBIA” under Application No. 242895 in class-44 was held at the Branch Office of Trade Marks Registry, in Lahore, hence, impugned order was passed at Lahore. Similarly in M.A. No. 29 of 2013 Registrar of Trade Marks heard Opposition No. 39/2012 in class-16 at Branch

Office Lahore as well as decision thereon. In view of above case laws admittedly proceedings were held at Lahore and decision thereon was passed by the Authority at Lahore, hence, Lahore High Court, Lahore, is having territorial jurisdiction. Admittedly that office which passed order and conducted proceedings is not within the territorial jurisdiction of this court. Thus, the appellant's are not *legally* justified in preferring and pressing the M.A(s) before this Court particularly when they (appellant's) do not claim that their case is covered by '*providing clause*' i.e any matter relating to **trade mark in question** is pending before this Court or before District Court, falling under jurisdiction of this Court.

Keeping in view the above given circumstances, captioned appeals are dismissed for want jurisdiction.

Sajid

J U D G E