

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Suit No. 2056 of 2019**

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Date Order with Signature(s) of Judge(s)

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1.For hearing of CMA No.17309/2019.

2.For hearing of CMA No.16967/2019.

**16.02.2021**

Mr. Munim Masood, Advocate for plaintiff.

Mr. Zia-ul-Haq, Advocate for applicant/intervenor.

Mr. Khaliq Ahmed Advocate for defendant No.3

Mr. Irfan Ahmed Memon, DAG

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1. This is an application (CMA No. 17309/2019) filed on behalf of Abdul Karim s/o. Muhammad Israr, trading as Green Industries Products, under Order 1, rule 10, C.P.C., seeking his addition in the suit as defendant No.5, on the ground that being registered proprietor of trademark “*Aahu Barah*” (both in English and Urdu) along with Leaping Dear Device, under No. 153697 in Class-30 as of March, 10, 1999, is a necessary and proper party to the suit.

Learned counsel for the applicant contends that the applicant is engaged in the business of procurement, processing, packaging, marketing, sell, supply, trading and export of rice to various countries of the world under various registered trademarks including one “*Aahu Barah*”, both in English and Urdu, along with Leaping Dear Logo, which is registered on his name under No. 153697 for Class No. 30 in respect of rice. (Copy of trademark registration is annexed as annexure “A” with the C.M.A.). He further contends that the applicant is the first ever original adopter/user/proprietor of his said trademark; besides, he enjoys copyright in the artistic features of Leaping Dear Logo, which also forms integral part of the registered trademark; therefore, by virtue of the provisions of the Copyright Ordinance, 1962 read with International Copyright Order, 1968, the applicant/intervenor has copyright in the Leaping Dear Logo published as

label in Pakistan, and on this scope, he has exclusive international copyright in the same; as such, only the applicant is authorized to use registered trademark “*Aahu Barah*” either alone or alongwith Leaping Dear Device Logo. Learned counsel also contends that on becoming aware of illegally exporting of consignments of rice by various trading concerns from Pakistan under trademark “*Aahu Barah*”, the applicant informed the customs authorities about such illegal export and on that the plaintiff’s consignment of rice to export Germany under the trademark “*Aahu Barah*” and copyrighted Leaping Dear Logo was detected by the customs authorities during examination and the same was subsequently detained by them. Later on, the applicant, vide letter dated 2.12.2019, requested the defendants/customs authorities to take legal action against the plaintiff. He also contends that the plaintiff through its counsel got a legal notice, dated 10.12.2019, served upon customs authorities, which is annexed at page No. 67 to 71 with the memo of plaint, specifically referring to the complaint filed by the applicant; however, the plaintiff intentionally avoided to implead the applicant as defendant. He, while referring prayer clauses of the suit, also contends that in case either of the prayers is granted by this Court, the same shall result in deprivation of the applicant from his valuable rights under his registered trademark “*Aahu Barah*” and copyright Leaping Dear logo. He adds that the applicant has already maintained his suit bearing No. 256 of 2020 before this Court against the plaintiff and his customer in Germany for violation of his trademark and copyright, but as the action against the plaintiff was initiated by the defendant/customs authorities upon a complaint made by the applicant and; consequently, plaintiff’s consignment was detained, and since the plaintiff disputes the right of the applicant in his registered trademark “*Aahu Barah*” and copyright before the customs authorities, the applicant is necessary party to join the suit as defendant No.5 for an effective and complete adjudication of all questions involved in the suit.

On the other hand, learned counsel for the plaintiff states that the applicant has no legal or vested right over the consignment of the plaintiff, which has illegally been detained by the defendants/customs authorities and through the instant suit plaintiff has challenged the legality of the action of custom authorities in detaining the plaintiff's consigned bound for export, which has no bearing on the rights of the applicant. He further states that the applicant in the past used to be an agent of the plaintiff's customer *Nadi Markt GmbH* in Germany, which relation of the applicant ended and now the plaintiff is exporting rice to said customer for many years. He also states that plaintiff's said customer is the first ever original adopter/user and proprietor of the trademark "*Aahu Barah*"; hence, the claim of the applicant in this regard is false and baseless and the applicant has fraudulently registered said trademark in Pakistan in order to halt the operation of said customer of the plaintiff in Pakistan. He adds that the applicant has initiated the alleged complaint against the plaintiff before the defendants/customs authorities illegally upon fraudulent misrepresentation that he is the owner of the trademark "*Aahu Barah*" international through his alleged group of companies and by means of application in hand he has attempted to mislead this Court otherwise the applicant is neither necessary nor proper party to join the suit as defendant. He also states that the applicant has already maintained his Civil Suit bearing No. 276/2020 against the plaintiff and his said customer and whatever right, title and legal character he claims, it would be decided in the said suit; hence, the application in hand being devoid of legal merit is liable to be dismissed. Learned counsel has placed his reliance, in support of his contentions, on the case of *Muhammad Sharif vs. Dr. Khursheed Anwar Mian* (1996 SCMR 781), wherein it has been observed "*the petitioner having no present right in the property in dispute is not directly interested in the dispute between the appellant and the respondent. Merely because he is financially interested in the result of the litigation can hardly afford a ground to be added as a party*".

Learned counsel appearing for the defendant No.3 as well as learned DAG while adopting contentions of learned counsel for the applicant/intervenor, maintain that being necessary and proper party the applicant should have been joined the suit as the defendants/customs authorities have initiated alleged action of detention of plaintiff's consignment on his complaint.

I have heard the learned counsel for the parties as well as DAG and perused the material available on record with their assistance.

The plaintiff firm is indulged in exporting rice and has maintained this suit seeking *inter alia* declarations that the entire proceedings of the detention and/or seizure of its goods/consignments are illegal, without jurisdiction, void *ab initio* and further direction that the consignment of the plaintiff be released forthwith, and that detention and/or seizure of the of plaintiff's consignment by the defendant No.2 to 4, without their complying with the mandatory provisions of law are absolutely capricious, illegal, discriminatory and tainted with biasness and mala fide.

For his impleadment as party in the suit, the applicant/intervenor has to satisfy the Court that his impleading is necessary or proper for an effective and complete adjudication of all questions involved in the suit. A necessary party is one without whom no order can be made effectively while the proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of all questions involved in the suit.

In the instant suit, it is an admitted position (*paragraphs 5, 10 & 12 of the plaint may be referred to*) that the plaintiff's consignment in container No. MRKU7762486 for export has been detained by the defendants/customs authorities on 05.12.2019 on the ground that the goods were counterfeit and infringed the registered trademark of applicant and the same was based on a complaint received from the advocate of the applicant, dated 15.05.2019. It is

also an admitted position that after the alleged detention of plaintiff's consignment by the defendants/customs authorities, another letter dated 06.12.2019 was issued by the advocate of the applicant to defendant No. 3, requesting him for issuance of Show Cause Notice to plaintiff and initiating proceedings under section 17 of the Customs Act, 1969 for seizure and confiscation of the detained consignment. The controversy in the suit, as set out in the plaint, apparently relates to the legitimacy of goods being exported by the plaintiff under trademark "*Aahu Barah*", and the applicant is the complainant of impugned action taken by the defendants/customs authority, who claims his right under laws of intellectual property; therefore, the applicant is directly and legally interested in the answer to the question involved in the suit; hence, the applicant appears to be proper party to join the suit.

Accordingly, C.M.A. under reference is allowed. The plaintiff is directed to file amended title by arraying applicant as defendant No.5, within two weeks hereof.

2. Adjourned to a date in office.

JUDGE

*Athar*