

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

High Court Appeal No. 119 of 2022

Date	Order with signature of Judge
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Fresh Case

1. For orders on CMA No. 886/2022.
2. For orders on office objection a/w. reply at "A".
3. For orders on CMA No. 887/2022.
4. For hearing of Main Case.
5. For orders on CMA No. 888/2022.

29.03.2022:

M/s. Amna Salman Ahmed & Saifullah Sachwani,
advocates for the appellants.

1. Granted.

2-5. Instant High Court Appeal has been filed against the order dated 28.03.2022 passed by the learned Single Judge in Suit No.471 of 2022, seeking Declaration to the effect that the registered trademark "HAMZA" in respect of respondent No.1 by respondent No. 2 may be cancelled, as according to learned counsel for the appellants, in terms of Section 67 of the Trade Mark Ordinance, 2001, it amounts to unfair competition and monopolization of a trademark, whereas, more than 20 exporters of rice, including respondent No.1 are exporting rice to Somalia in the name, style and logo of "HAMZA" since 2015. Per learned counsel, an application seeking interim relief was filed with the prayer that respondents may be directed not to create any hindrance and not to take any adverse action against the appellants in respect of exports being made by the appellants to Somalia pursuant to registration of trademark, however, no interim relief has been granted. Per learned counsel, the appellants have also filed rectification application being J.M. No.11/2022 in this Court, however, no order is passed in the said J.M., whereas, prayer for interim relief has not been entertained

by the learned Single Judge, which is likely to cause financial losses and injury to the appellants. It has been prayed that interim relief as claimed, may be granted to the appellants.

Conversely, M/s. Mirza Mehmood Baig & Ms. Hanya Haroon, Advocates present in Court pursuant to Notice under Order 43 Rule 3 CPC, waive notice of instant High Court Appeal on behalf of respondents, claim copy of instant High Court Appeal alongwith annexures, undertake to file vakalatnama and request for time to file objections/reply. However, they have raised preliminary objection with regard to maintainability of instant High Court Appeal on the ground that since no adverse or final order has been passed by the learned Single Judge against the appellants nor the application filed by the appellants seeking injunctive relief has been dismissed, whereas, on the first date of hearing, notices have been issued to defendants for hearing on 05.04.2022. Learned counsel for the respondents further submit that by filing of instant High Court Appeal, the appellants intend to pre-empt the decision to be taken by the learned Single Judge on the injunction application, which is pending disposal. It has been further contended by the learned counsel for the respondents that the appellants otherwise have no case on merits, whereas, respondents have a registered trade mark "HAMZA" in their favour with the disclaimer.

After hearing the learned counsel for the parties and from perusal of the impugned order passed by the learned Single Judge, it appears that no adverse order has been passed against the appellants, which may give rise to any cause of grievance to agitate by filing the instant High Court Appeal before this Court, whereas, no final order or even any interim order on the injunction application has

been passed by the learned Single Judge, which is pending, whereas, notices have been issued for 05.04.2022, when the appellants can press for any interim relief in accordance with law.

We are of the opinion that instant High Court Appeal is misconceived and premature as prima facie, there is no adverse order either in favour or against the appellants, whereas, the appellants are at liberty to seek ad-interim injunctive relief on the next date of hearing, which request can be examined by the learned Single Judge, however, keeping in view the facts and circumstances of the case on its own merits, after hearing the learned counsel for the parties, whereas, an appropriate order can be passed on the injunction application in accordance with law.

Accordingly, we do not find any substance in the instant High Court Appeal, which being premature is hereby dismissed in limine alongwith listed applications.

J U D G E

J U D G E

A.S.