

IN THE HIGH COURT OF SINDH AT KARACHI

Misc. Appeal No. 01 of 2018

Dr. Nadeem Kiani

Versus

Intellectual Property Organization
of Pakistan & others

Dates of hearing: 18.5.2018 and 25.5.2018

Appellant: Through Sajjad Asghar Khurram
Advocate

Respondents No.1 & 2: Through Mr. Muhammad Salim Ghulam Hussain
Advocate

Respondent No.3: Through Mr. Khurram Rasheed Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This Miscellaneous Appeal impugns an the order dated 20.11.2017 passed by the Registrar Trademarks forwarded by the Examiner to the appellant.

2. Through the impugned order, the Registrar of Trademarks allowed the Rectification Application No.02/2017 and the trademark “American Lycctuff” bearing registered No. 259666 in Class-41 was removed, expunged on account of fake and fabricated signatures and fraud.

3. Being aggrieved of the short order, the appellant Dr. Nadeem Kiani being Chief Executive of American Lycctuff (Pvt.) Limited, a company incorporated under the Companies Ordinance, filed this appeal under section 114 of the Trademark Ordinance, 2001 and challenged the competence of the Examiner and also that the appellant was deprived of hearing.

4. This Court on 16.1.2018 took notice of the maintainability of this appeal, as trademark was claimed to be owned by the American Lycctuff (Pvt.) Limited and not by any individual. On 26.1.2018 an attempt was made to file amended title in the name of the company, however the resolution of the relevant time or any other was not placed on record. Subject to the maintainability of the appeal, notices were issued and the appeal was heard.

5. Counsel for the appellant has relied upon the judgment passed in the case of M.H Sayya reported in PLD 1969 SC 65 which Bench while deciding the issue of competence of a stranger has observed that a stranger is not prohibited by the Civil Procedure Code from filing an appeal against an order.

6. Primarily a serious objection was taken by the Respondent's Counsel as to its maintainability, as the company American Lycctuff (Pvt.) Limited was allegedly an aggrieved party and not the individual director.

7. I have heard the learned Counsels and perused the material available on record.

8. At the very outset, the judgment that is relied upon by the appellant is not applicable to the facts and circumstances of the case as this appeal is governed by a special law having special procedure to be adopted. The appellant has not filed this appeal as being a stranger. He filed it in the capacity of a director and claimed himself to be an aggrieved. The subject trademark, rectified through impugned order under Rectification Application No.02/2017 was claimed by American Lycctuff (Pvt.) Limited and not by an individual. Though it was claimed to have been registered under registered No.259666 in Class-41 however it was removed as being fake and fabricated. Without commenting about

legality of the impugned order, this Court is required to see first as to whether this appeal is competent or otherwise.

9. On 26.1.2018 the appellant was enquired as to how this appeal was filed, he has only to say that there are only two directors and since the other director was divorced by the appellant therefore, he had no alternate. I am afraid that those two directors may have a matrimonial dispute between them as being husband and wife but there was nothing to prevent the appellant from initiating proceedings for convening a meeting for passing a resolution for the purpose of filing this appeal or from taking any other lawful step or steps. The only aggrieved party, since trademark was claimed by a private limited company, is American Lycctuff (Pvt.) Limited and there was nothing to prevent appellant from calling and convening a meeting for passing resolution but such course was not adopted even after the objection was taken by this Court. Mere filing of amended title would not cure the defect committed at the time of institution of this appeal. The business and affairs of the company, in terms of the memorandum of association, is always subject to the control and supervision of the Board of Directors. Since the subject trademark was admittedly claimed to have been owned by a private limited company, the appellant alone cannot consider himself as being aggrieved person unless the procedure, as required under the company law, for convening a meeting for passing a resolution was adopted.

10. In the case of Tele Card Limited vs. Pakistan Telecommunication Authority reported in 2014 CLD 415, the Hon'ble Supreme Court while discussing the subject issue held that a lis cannot be initiated on behalf of the company which was a juristic person, without having due authority either in terms of the articles of association or by the board resolution which was conspicuously missing in the present case. In this case as well the appellant had not filed any supportive document to

establish that the appellant being Chief Executive was authorized by the Board of Directors to file this appeal.

11. Similarly in the case of Trading Corporation of Pakistan Ltd. vs. Haji Khuda Bux Amir Umar Ltd reported in 2007 YLR 1745 the Division Bench of this Court held that filing of suit by a person not duly authorized on behalf of the company, either by Board Resolution of the company or by Memorandum of Association is not competent.

12. The company being a juristic person acts through its Board of Directors which authorized its officer or any of them to act on its behalf by any authority conferred in the resolution of Board of Directors, hence the appeal being not maintainable is dismissed along with pending applications.

Dated:_____

Judge