

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

M.A No.34 of 2022

Order with signature of Judge(s)

Fresh case

1. For orders on office objection a/w reply of the counsel
2. For orders on CMA No.2850/2022 (Exemption Application)
3. For orders on CMA No.2851/2022 (U/O 41 Rule 5 r/w 151 CPC)
4. For hearing of main case

19.02.2024

Raja Qasit Nawaz, Advocate for the appellant

1. Deferred.
 2. Exemption granted subject to all just exceptions.
- 3&4. This appeal arises out of order passed by the Registrar of Trade Marks in Opposition No.1988/2017, wherein the present appellant filed opposition against registration of trademark “KAPADIN” in the name of Asif Kapadia trading as International Trade Centre. Counsel for the appellant points out that appellant was one of the four partners of the company called S. ESSA created on 26.06.1997 (partnership is attached at page 93), which company was inherited by the four brothers from their father alongwith a number of trademarks registration starting with the prefix KAPA. Counsel draws Court’s attention to page 145, where trademark KAPADIN with device of cotton flower was filed by all the four brothers on 16.08.2022 vide application No.179746, such application, perusal of the documents suggests, is still pending. The proof of the mark is available at page 147 for the impugned trademark 300221 in class-5, which is only filed in the name of Asif Kapadia. Counsel states that a number of trademarks were owned by all the brothers and whilst there is a dispute between the partners, the partnership law still does not permit a single partner to apply for trademark registration directly in his personal name under Section 39(1) of the Trade Marks Ordinance, 2001 property in a trademark rests in the firm operated by all the four

brothers, therefore opposition filed by one of brothers against registration of the trademarks by one single individual Asif Kapadia should not have been dismissed as the appellant have equitable prior rights in the property in the said trademark. Counsel states that while the parties are litigating at various forums, the instant opposition disallowed by the Respondent No.1 is devoid of merit and would result in dilution of the trademark, a request is made that no further orders be passed by the Registrar of Trade Marks of the above trademark till further orders of this Court.

Contentions raised require consideration. Issue notice to the respondents for **12.03.2024**. In the meanwhile, operation of the impugned order dated 11.09.2020 to remain suspended and no further orders be passed by the Respondent No.1 in this regard till the next date of hearing.

JUDGE

B-K Soomro