
2024 C L D 1409

[Lahore]

Before Shahid Karim, J

MUHAMMAD WAHEED---Petitioner

versus

ADNAN RIAZ and others---Respondents

F.A.O. No.74662 of 2022, decided on 3rd May, 2023.

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Intellectual Property Organization of Pakistan Act (XXII of 2012)---

---S. 19---Partnership Act (IX of 1932), S.4---Matter of use of trade mark before Intellectual Property Tribunal---Application for temporary injunction---Parties being siblings / (previous) partners---One of the partners restrained from using trademark till disposal of the suit---Legality---Petitioner assailed order passed by the Intellectual Property Tribunal ('the Tribunal'), whereby an application for grant of temporary injunction brought by respondents (two in number) was accepted; and petitioner was restrained from the use of the trademark till disposal of the suit by holding that the trade mark belonged to the partnership---Validity---Issue-in-hand related to the rights under the business by the specific name and style ('Riaz & Sons') which was admittedly established by the father of the petitioner and two respondents---Undisputedly, both the parties had applied for registration of trademark in their own name which applications were pending---Both the parties claimed the exclusive use of the trademark---Existence of partnership arrangement established about seventeen years ago was also an undisputed fact which clearly showed that both the petitioner and respondents were partners in the firm---Thus, the issue between the parties related to the use of specific trademark ('Riaz & Sons') and also the respective obligations arising out of the partnership agreement---It had been held in the impugned order that the trade mark belonged to the partnership firm and not to the individual partners and that the partnership firm had not been dissolved and the assets of their father to the extent of 78% of the shareholding was to be distributed in accordance with the Partnership Act, 1932---Having held so, the Tribunal was wrong in granting injunction to one of partners i.e. respondents and restraining the petitioner from the use of the trademark till disposal of the suit---This would give a free hand to respondents to use the trademark to the exclusion of the petitioner which was iniquitous and did not fulfill the requirements of law---Clearly, the dispute had to be determined regarding use of the trademark and also the right of one of the parties to its use upon registration of the trademark, which applications were still pending---In the meantime, none of the parties could be restrained from the use of trademark to the exclusion of the other---Therefore, the Tribunal was wrong in accepting the application of respondents---High Court set aside the impugned order restraining the petitioner from the use of the trademark till disposal of the suit---Appeal was allowed, in circumstances. [p. 1411] A, B & C

Muhammad Shakeel Abid for Appellant.

Usman Nasir Awan for Respondents Nos.1 and 2.

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