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Intellectual Property Attorneys

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## **COPYRIGHT – SUIT FOR PERMANENT INJUNCTION, DAMAGES AND RECOVERY OF POSSESSION**

**Appellants:** HASSAN ZIA and another

**Respondents:** Mrs. Umera Arsam and others.

**Decision:** Appeal was partly allowed modifying the order to the extent that defendants in the suit were restrained only from altering, changing or modifying the script from the novel.

In this case an appeal was filed against the judgment passed by the Court of the learned Addl. District Judge, Islamabad (exercising the powers of Intellectual Property Tribunal under the provisions of IPOP Act), allowing Respondent No.1's application for temporary injunction filed along-with the suit for permanent injunction, damages and recovery of possession under the provisions of Copyrights Ordinance, 1962.

The brief facts of this appeal were that Respondent No.1 had authored a novel called "Thoda Sa Aasman" protected by copyright. In 2008, respondent No.1 wrote a script for a drama based on the novel and its title. This script was sold to respondent No.2 (Pakistan Television Corporation), which aired in 2009. Under the agreement between respondent No.1 and respondent No.2, the latter gained proprietary rights over the said script. The appellants, with the consent of respondent No.2, used the said script with new characters and advanced technology with the intention of airing the same. Aggrieved by this, respondent No.1 instituted the above suit along with an application for interim injunction. Vide order dated, 18.02.2016, the learned trial Court allowed the said application. The said order had been impugned by the appellants in the instant appeal.

Learned counsel for the appellants drew the attention of the court to the terms and conditions of the agreement through which respondent No.1 had sold all rights with respect to the script for the 26 episode drama called "Thoda Sa Aasman", and submitted that respondent No.2 was well within its rights to sell the said script to any other party; that having sold the script, respondent No.1 did not have any rights with respect to the same; that in the year 2008-2009, respondent No.2 had produced and broadcasted the drama on an adapted version of the novel "Thoda Sa Aasman"; that the appellants had no intention to breach respondent No.1 's copyrights in her novel "Thoda Sa Aasman"; that the respondents had no intention to alter or change the script of the drama which had been earlier sold by respondent No.1; that as respondent No.1 had sought damages in her suit, she was not entitled to an interim injunction; that the mere fact that the appellants had been proceeded against ex parte before the learned trial court did not deprive them from pursuing the appeal against the impugned order dated 18.02.2016; and that the statute (IPOP Act) gave the appellants the rights to challenge an interim order passed by the learned trial court.

On the other hand, the learned counsel for respondent No.1 raised a preliminary objection to the effect that an appeal against the interim order dated 18.02.2016 was not maintainable. He relied on the provisions of different statutes, drew the attention of the Court to Section 19 of the IPOP Act, and submitted that an appeal is maintainable only against a final judgment or a final order passed by the Intellectual Property Tribunal; that the order dated 18.02.2016, being an interim order, an appeal against the same was not maintainable. Furthermore, the learned counsel submitted that as



the appellants had proceeded against ex parte before the learned trial court, and that since their application to set-aside the order whereby they proceeded against ex parte had, till date, not been decided, the appeal was liable to be dismissed. Learned counsel prayed for the dismissal of the appeal on these grounds only.

On the merits of the case, the learned counsel for respondent No.1 submitted that the appellants had substantially changed the script of the drama which had been sold by respondent No.1 to respondent No.2 in 2008; and that in changing the script, the appellants had used contents of respondent No.1's novel, the copyright of which was protected. In rebuttal, the learned counsel for the appellants made reference of different reported cases, in support of his contention that an appeal against an interim order was maintainable under Order XLIII, C.P.C. and that procedures are meant only to regulate and foster the cause of justice and do not thwart the same.

After hearing learned counsel for the contesting parties and perusal of the record, the Appellate Court formed a prima facie view that in 2008 respondent No.1 had sold out her all rights with respect to the script for the drama "Thoda Sa Aasman" to respondent No.2 even, if the copyright with respect to the novel was protected, respondent No.1 could not make any grouse against the appellants or respondent No.2 and 3 for using the script for the drama called "Thoda Sa Aasman", however, the appellants and respondents Nos.2 and 3 cannot alter, change or modify the script of the drama, which was sold by respondent No.1 in 2008. There is, however, nothing preventing the appellants and respondents Nos.2 and 3 from using the same script in a drama with new characters and new technology. Consequently, the appeal was partly allowed and the interim order was modified to the extent that defendants in the suit were restrained only from altering, changing or modifying the script for the drama "Thoda Sa Aasman" sold by respondent No.1 to respondent No.2 in 2008.

