

# HELLO

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## CIVIL PETITION CONVERTED INTO APPEAL AND ALLOWED

**Petitioner:** Muhammad Multazam Raza  
**Respondent:** Muhammad Ayub Khan and others  
**Decision:** Civil Petition before the Supreme Court of Pakistan against Dismissal of petitioner's FAO by Islamabad High Court.

In this case the Single Judge of the Islamabad High Court dismissed the petitioner's FAO against the order passed by the Intellectual Property Tribunal ("the tribunal"), whereby the tribunal returned the petitioner's plaint filed against the infringement of a registered trade mark "Ranchers", for perpetual injunction restraining the defendants from using the said trade mark, as being not maintainable before the tribunal.

The averments were that the petitioner and respondent No.1 entered into a partnership agreement to conduct the business of promoting, developing and managing international franchises. A partnership firm was thus formed and registered under the name of Zakori International, operating two successful brands in Pakistan namely "Mr. COD" and "RANCHERS". The trade mark "RANCHERS" is registered in the joint name of the petitioner and the respondent no.1. It is further stated that in terms of the franchise agreement, Zakori International granted a limited license and franchise for operating a "Ranchers" Restaurant in Sector 1-8 (Markaz), Islamabad to M/S Royal Manor. However, the respondent No.1 without the consent of the petitioner entered, on behalf of Zakori International, into a tripartite Joint Venture Agreement ("JVA") with M/S Royal Manor, and one Afnan Shareef, the Respondent No.2, as its joint venture partner in respect of the franchise restaurants operated by it under the name and style of "Ranchers", Whereas Zakori International in terms of the said JVA, purportedly undertook to grant master franchise rights regarding "Ranchers" to respondent No.2. The petitioner contended that Zakori International could not have participated in the aforesaid JVA without the consent of the petitioner and that by extending the agreement to respondent No.2, the right of master franchising of "RANCHERS" unilaterally, and without the consent of the petitioner, the respondent No.2 clearly infringed the registered trade mark, which was jointly owned by the petitioner and respondent No.1. Furthermore, this went above the law where there is a clear restriction imposed by subsection (5) of section 24 of the Trade Marks Ordinance 2001. In addition the respondent Nos.1 and 2 incorporated a Private Limited Company by the name of "Ranchers Café (Pvt.) Ltd.", the respondent No.3, for the same business as is being done by Zakori International under its trade mark "Ranchers".

The Tribunal returned the plaint under Order VII, Rule 10, C. P. C., on the grounds that since the trade mark has not been physically used by the respondent No. 2 in the course of trade, the suit is not maintainable within the meaning of Section 46(1) and (2) of the Ordinance, 2001 and that since dispute is between the respondent No.1, as co-owners of a trade mark, any violation of section 23(5) read with section 69 of the Ordinance, 2001 cannot be agitated before the Tribunal.

After hearing the arguments of the counsels and examining the relevant laws, the Court held that the respondent No.1 without the petitioner's consent granted master franchise rights in respect of the subject trade mark to the third party,





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which was clearly in violation of section 24(6) of the Ordinance, 2001 which entitled the aggrieved co-proprietor (Petitioner) to initiate infringement proceedings. The use of name "Ranchers Cafe (Pvt.) Ltd." by the company incorporated by the respondent and a third party was clear infringement of the trade mark "Ranchers" as described/explained by sections 24 and 40 of the Ordinance, 2001, respectively, as infringement of registered trade mark and as provided therein were actionable thereunder. Petitioner's case thus undoubtedly fell within the exclusive jurisdictional ambit of the tribunal as laid down by sections 17, 18 and 39 of the Intellectual Property Organization Act, 2012. Consequently, the petition for leave to appeal was converted in to appeal and allowed and case was remanded to the tribunal to proceed in accordance with law.

