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APPEAL AGAINST INJUNCTIVE ORDER PASSED BY IP TRIBUNAL IN TRADE MARK INFRINGEMENT SUIT

Appellant: SAMSARA COUTURE HOUSE (PVT.) LTD; through Chief Executive and another.
Respondent: Syeda KHADIJA BATOOL and 2 others.
Decision: Appeal allowed setting-aside the injunctive order of IP Tribunal.

In this case, Respondent No.1 instituted a suit before the IP Tribunal, Lahore claiming to be the bona fide owner, prior adopter and user of trade mark 'SAMARA' or 'SAMARA by Khadija Batool', and, that the registration of 'SAMARA Couture House (PVT) Limited' with the Securities and Exchange Commission of Pakistan by the appellants and use of mark 'SAMARA' amounted to infringement of her rights. The suit contested by the appellants, raised various objections including the claim of prior user being false, as the respondent No.1 after her graduation in fashion designing entered into a partnership agreement with appellant No.2 who had vast experience in textile industry. It was claimed in the written statement that 'SAMARA' was owned by the partnership as evident from the recital and clauses of the partnership agreement. The IP Tribunal granted injunction application restraining the appellants from using the trade mark 'SAMARA' or 'SAMARA by Khadija Batool' and the name 'SAMARA Couture House (PVT) Limited'. The appellant preferred an appeal against the said order of the IP Tribunal.

It was admitted before the court that the mark in question was not yet registered in the name of any of the parties to the suit. The appellant No.2 and respondent No.1 filed applications for the registration of disputed mark on 27.09.2017 and 10.10.2017 respectively. The claim of respondent No.1 was based on prior use of 'SAMARA', being its alleged creator and goodwill acquired through prior usage. The court observed that in cases of unregistered trade-marks, filed on the basis of prior use or goodwill acquired through such usage, at interim stage, it was commonly important for the Courts to tentatively assess the sales invoices, advertisements in print and electronic media as well as promotion through tangible means, receipts, returns showing trade with the given name as well as other relevant documentary evidence filed by the two sides.

After going through the documents attached with the plaint by Respondent No.1, the Court observed that the documents were required to be assessed in trial to see their veracity and on the other hand the partnership agreement not denied by the parties, admitted document showed that the parties intended to carry business in the name and style of 'SAMARA by Khadija Batool'. As per clause 6 of the partnership agreement the Respondent No.1 and Appellant No.2 were equal shareholders in profit and loss.

The Court further stated that it was settled that interim injunction, by its nature was a preventive relief preserving the status quo of the subject matter till the final conclusion of the suit. After ascertaining prima facie case and by assessing the documents, the Court would see the existence of the remaining two factors of balance of convenience and irreparable loss or injury. The preventive relief, in such circumstances and in the cases of unregistered marks, should not be granted as a matter of course and it was suitable when existence of right by prior use or its creation as well as its infringement were demonstrated with some clarity. The Court further observed that the learned counsel for respondent No.1 had not given any reasonable explanation as to the other suit instituted on behalf of respondent No.1 wherein, the Civil Court restrained the parties from violating of the terms of the partnership agreement.

Keeping in view the particular facts of the case, the Court was of the opinion that three ingredients required for grant of interim injunction were not co-existing in the present case. Consequently, appeal was allowed and the order passed by the learned Tribunal was set-aside. The learned Tribunal was also directed to decide the suit at the earliest preferably within five months.

