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REVISION PETITION ALLOWED AGAINST ORDER PASSED BY ADDL. DISTRICT JUDGE, LAHORE

Petitioner: NESTLE PAK LIMITED, LAHORE through Authorized Signatory and another.
Respondent: SHEHRYAR KURESHI and 3 others.
Decision: Revision Petition allowed and judgment passed by Addl. District Judge, Lahore was set aside and plaint returned for presentation before concerned Intellectual Property Tribunal.

In this case, the Respondents instituted a suit for recovery of damages against petitioners, asserting that the petitioners formed a musical collaboration which was produced, composed, sung as a song "Pyar Diyan Gallan" and throughout held all the rights and interests over the song's audio and recordings, the original music works as well as the literary/artistic work involved therein; the musical video being available on Daily Motion, Facebook and YouTube; song's basic melody and lyrics were composed and written by respondent No.1; the production was finalized at the residence of respondent No.3; the composition and production was refined and lyrically improvised by respondent No.2, who was also the producer and director of the original video of the song released in the year 1994. Respondent No.4 performed one of the rap parts of the song. In 2019, petitioners collusively reproduced the song with behind the scene footage performing the original song "Pyar Diyan Gallan" and broadcasted the same on various television channels through satellite and other available modes; the song was also marketed and broadcasted in Pakistan and the rest of the world and then aired on YouTube, Daily Motion and Facebook and used the names of original artists and collaboration for commercial gain without the consent of the original stakeholders/producer/composer/lyricists of the song; without any license, permission or consent from the collaboration expressly impliedly despite the fact that they were fully aware of the fact that the song was not a solo project. The petitioner passed off the original creators and misused their name without an authority. The song seriously jeopardized the reputation of the collaboration, which asked for an apology on media and payment of damages by petitioners. The petitioner filed an application under Order VII, Rule 10, C.P.C. for return of plaint due to want of jurisdiction, which was resisted by respondents by filing written reply. After hearing arguments from both sides, learned Trial Court accepted the application and returned the plaint. Feeling aggrieved, respondents assailed said order in appeal before learned Additional District Judge, which was accepted and order of learned Trial Court was set aside and suit was remanded for decision afresh in accordance with law against which the petitioner has filed this revision petition.

The counsel for the petitioners submitted that the contents of the plaint clearly suggested that respondents claimed copyrights of the song, alleged copyrights infringement and demanded fringe benefits of the copyrights, losses and other damages, not in torts. He contended that the Intellectual Property Tribunal had exclusive jurisdiction in matters regarding infringement of Intellectual Property Laws, including infringement of copyrights as per section 18 of the Intellectual Property Organization of

Pakistan Act, 2012, all suits and other civil proceedings regarding infringement of copyrights were to be exclusively triable by an IP Tribunal. That the allegations: unauthorized reproduction of the song; use of behind the scene performance of original song; unauthorized broadcast and marketing; lack of permission or license from concerned authority constituted infringement of copyrights under the provision of the Copyright Ordinance, 1962, thus Civil Court had no jurisdiction in the matter.

Conversely, counsel for respondents submitted that judgments relied upon by petitioners discussing passing off action in relation to registered marks and not passing off action for unregistered trade mark and that respondent's claim was based on passing off action and not on infringement of trade mark, hence Civil Court had jurisdiction in the matter.

After hearing arguments and perusal of documents on record the Court observed that the prime question for determination was whether the suit was triable by the Civil Court or by Intellectual Property Tribunal. It was conspicuous that respondent claimed all rights and interests in their musical work i.e. the song "Pyar Diyan Gallan", which duly comes under the meaning of "Copyright" and established that respondent's claim was based on infringement of copyright and irrespective of registration of the copyright, they were entitled to all remedies provided in chapter XIII of the Copyright Ordinance, 1962 in contrast to passing off actionable in tort before the Court of first instance.

Before pondering further upon the matter of jurisdiction in cases pertaining to intellectual property disputes, the Court observed that the preamble of the IPO Act, 2012 made it crystal clear that the very purpose of the IPO Act, 2012 was to consolidate the intellectual property regime by establishment of Intellectual Property Organization along with establishment of Intellectual Property Tribunal having exclusive jurisdiction in adjudication of all civil as well as criminal matters arising out of or in relation to the Intellectual Property Laws in Pakistan, as there was no indication of even a slightest degree which could lead to the inference that any matter pertaining to intellectual property rights or matters connected therewith or incidental thereto was either excluded from the jurisdiction of the tribunal or that some restriction was imposed by the legislature for the exercise of said exclusive jurisdiction. Consequently, the petition was allowed and judgment dated 24-06-2022, passed by learned Addl. District Judge, Lahore was set aside and plaint of respondent's suit returned for its presentation before concerned Intellectual Property Tribunal.