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JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

F. A. O. No. 46541 / 2022

Muhammad Akram Rahi

Versus

The Copyright Board and three others

JUDGMENT

Date of Hearing:	04.06.2024
Appellant By:	Mr. Saqib Asghar, Advocate Mr. Mudassar Hassan, Advocate
Respondents No. 2-a to 2-c By:	Mr. Haris Bin Hassan Jang, Advocate
Applicant in C.M. No. 3-C/2022 By:	Syed Danish Ghazi, Advocate

ABID HUSSAIN CHATTHA, J: This Appeal is directed against the impugned Order communicated to the Appellant vide letter dated 04.07.2022 on behalf of Respondent No. 1 (the “**Copyright Board**”), whereby, an application for rectification No. 26 of 2020 of Respondents No. 2-a to 2-c (the “**Respondents**”) filed through special attorney, namely, Sohail Riaz was accepted and in consequence thereof, copyright entry under registration No. 40552-Copr dated 19.02.2020, titled “*IK AKRAM RAHI*” (the “**Poetry Book**”) in favour of the Appellant was ordered to be expunged and cancelled.

2. The brief facts of this case are that the Respondents filed an application under Section 41(2) of the Copyright Ordinance, 1962 (the “**Copyright Ordinance**”) seeking to rectify the Register of Copyrights by expunging therefrom entry of registration of the Poetry Book registered in favour of the Appellant. It was averred in the application that the Poetry Book consisting of 1406 pages is not an authentic work of the Appellant, rather, the same is plagiarized. References were made to some poems and songs statedly written and sung by different persons in an endeavour to

demonstrate claim of the Respondents that in fact, intellectual property rights regarding the same belong to others which have been infringed by incorporating the same in the Poetry Book of the Appellant as his original work. It was also claimed that the Respondents hold ownership rights by way of assignment from some of the original authors and singers whose poetry or songs are included in the Poetry Book. It was also asserted that a defense schedule to claim filed in the Birmingham High Court by the Appellant and his Solicitor with a statement of truth in relation to eleven works included in the Poetry Book testify that they were not authentic or original work of the Appellant. As such, the Appellant had concealed material facts while applying and obtaining copyright in his name regarding the Poetry Book in violation of various provisions of the Copyright Ordinance.

3. The Appellant, in his counter statement, resisted claim of the Respondents by submitting that he is a renowned international poet, writer, singer, producer, compiler and composer and has released a number of music albums. He applied and obtained copyright of his Poetry Book with clean hands for protection of his intellectual property rights under Section 39 of the Copyright Ordinance and the same was granted after following due process of law. As such, the Appellant is an original singer, lyrics writer, composer and compiler of work incorporated in the Poetry Book.

4. The Copyright Board after hearing both the parties and examining the evidence placed on record opined that, *prima facie*, it appears that the Poetry Book of the Appellant is not an authentic literary and original work, rather, the same is plagiarized. Accordingly, the application for rectification was allowed and entry of copyright in favour of the Appellant was ordered to be expunged. Hence, this Appeal.

5. At the very outset, learned counsel for the Appellant raised a serious objection qua jurisdiction of the Copyright Board to hear and decide rectification applications based on infringement of intellectual property rights. He contended that the Intellectual Property Organization of Pakistan Act, 2012 (the “**IPO Act**”) created and established the Intellectual

Property Organization (the “**IPO**”) to administer regulation of all intellectual property rights previously vested in different regulatory bodies under scattered existing intellectual property laws in Pakistan. Similarly, forum of remedy for infringement of intellectual property rights has been streamlined by establishing Intellectual Property Tribunal (the “**Tribunal**”) under Section 16 of the IPO Act which exercises exclusive jurisdiction under Section 18 thereof with respect to infringement of intellectual property rights under all intellectual property laws included in the Schedule of the Act. As such, the IPO Act provides for the Tribunal as a consolidated and exclusive forum to adjudicate all civil proceedings regarding infringement of intellectual property laws in substitution of various remedies before different forums under existing intellectual property laws. The purpose is achieved by conferring an overriding effect to the IPO Act over all other intellectual property laws under Section 39 thereof. The precise issue has been settled in case titled “Messrs Shaheen Chemist through Proprietors and 3 others versus Zahid Mehmood Chaudhry and another” (2023 CLD 1). Hence, the Copyright Board did not have jurisdiction to entertain and adjudicate upon the rectification application which was based upon claims of infringement of intellectual property rights of others. The point of jurisdiction was verbally but vociferously raised before the Copyright Board which goes to the root of the case but no finding to this effect was rendered. As such, the impugned Order is patently without jurisdiction, *void ab initio* and *coram non judice*.

6. Conversely, learned counsel for the Respondents submitted that question of jurisdiction was not taken in writing in counter statement of the Appellant and as such, cannot be raised before this Court. In any event, the objection qua jurisdiction is misconceived for the reason that jurisdiction vested with the Tribunal under the IPO Act in terms of Section 18 thereof, is limited with respect to infringement of intellectual property rights under intellectual property laws, whereas, the Application for rectification did not question the infringement of any intellectual property right of the Respondents but merely sought rectification *simpliciter* on the

ground that the Appellant had applied and obtained copyright of his Poetry Book by concealing material facts and as such, the same was erroneously granted to him. Hence, the matter exclusively fell within jurisdiction of the Copyright Board under Section 41(2) of the Copyright Ordinance and therefore, the rectification application was rightly accepted.

7. It is well entrenched in our jurisprudence that question of jurisdiction of an adjudicating forum goes to the very root of the case and if such forum is not vested with the jurisdiction to decide the dispute or assumes jurisdiction not vested in it, the order passed by it is *void ab initio* and of no legal effect. When the Court does not have jurisdiction, no amount of consent or acquiescence can invest such Court with such jurisdiction. It is also well settled that point of jurisdiction is purely a question of law which can be raised even if it has not been taken in writing, although propriety demands that it should be raised in the first instance. Since the impugned Order is silent with respect to the question of jurisdiction, therefore, notwithstanding that the same was raised and not determined, or it was not raised at all, this Court in appellate jurisdiction which is a continuation of original proceedings, finds it obligatory to address the same. For reference see cases titled, “Muslim Commercial Bank Limited versus Muhammad Anwar Mandokhel and others” (2024 SCMR 298); “Dr. Tahir Masud versus Amjad Ali Khan and 4 others” (2019 PLC (C.S.) 1167); and “WAPDA through Chairman and 3 others versus Khalid Pervaiz” (2015 YLR 1598). The following point of reference emerges from rival contentions of the parties for determination by this Court:

Whether the Copyright Board under Section 41(2) of the Copyright Ordinance or the Tribunal under Section 18 of the IPO Act has the jurisdiction to decide rectification applications?

8. In order to address the query, it is imperative to comparatively examine the Copyright Ordinance and the IPO Act. It is pertinent to mention that prior to the promulgation of the IPO Act, various special laws

were enacted to regulate, protect and safeguard various intellectual property rights. The Copyright Ordinance is one such statute which was promulgated in 1962 with the objective to amend and consolidate the law relating to copyrights. It seeks to create a regulatory regime to administer multiple facets of copyrights law. It defines and prescribes conceptual contours and legal rights with respect to copyrights and associated rights regarding publication, ownership, recognition, assignment, relinquishment, licenses, registration, infringement, prohibitions, offences, penalties and enforcement. At the same time, remedies are provided to an aggrieved party for enjoyment and protection of such rights. Section 38(1) of the Copyright Ordinance entrusts the Registrar of Copyrights to maintain a register in the prescribed form to be called the Register of Copyrights for entering the names or title of works and names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed. Section 39 thereof stipulates the procedure for applying before the Registrar for grant or refusal of copyright. Similarly, Section 40 thereof empowers the Registrar to grant or refuse registration of an interest in a copyright to any person, either by assignment or licence. The refusal to register a copyright or an interest therein under Sections 39 and 40 of the Copyright Ordinance by the Registrar mandates the latter to record reasons for such refusal. Section 41 of the Copyright Ordinance pertains to correction of entries in the Register of Copyrights and indexes and is commonly referred as rectification of Register. The said provision is at the center of controversy and is reproduced below for ready reference:

“41. Correction of Entries in the Register of Copyrights and Indexes, etc.

(1) The Registrar may in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights and indexes by--

- (a) correcting any error in any name, address or particular; or*
- (b) correcting any other error which may have arisen therein by accidental slip or omission.*

(2) *The Board, on application of the Registrar or of any person aggrieved, may order the rectification of the Register of Copyrights by-*

- (a) *the making of any entry wrongly omitted to be made in the Register, or*
- (b) *the expunging of any entry wrongly made in, or remaining on, the Register, or*
- (c) *the correction of any error or defect in the Register.”*

9. Section 43 establishes the Copyright Office to administer and regulate provisions of the Copyright Ordinance and proclaims that the Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and directions of the Federal Government. The Copyright Board is constituted under Section 45 of the Copyright Ordinance and consists of a Chairman and three to five other Members appointed from outside the Copyright Office by the Federal Government. Powers and procedure of the Copyright Board are listed in Section 46 of the Copyright Ordinance. Chapter XII of the Copyright Ordinance deals with infringement of copyrights. Section 56 thereof lists in detail instances when a copyright is infringed, whereas, Section 57 thereof is couched in negative covenants narrating acts which do not constitute an infringement of a copyright.

10. Chapter XIII of the Copyright Ordinance deals with civil remedies that may be availed for infringement of various rights emanating from infringement of copyrights. Section 65 thereof designates the District Court as the forum for every suit or other civil proceeding regarding infringement of copyrights provided that, where the person whose copyright in a work has been infringed does not intend to institute a suit or proceeding in the District Court, he may by Petition in the prescribed manner, refer the matter to the Copyright Board for decision. Sub-Sections (4) & (5) of Section 65 of the Copyright Ordinance conjunctively provide that in such an eventuality, the Copyright Board shall decide the matter to the exclusion of the Court which shall be final subject to the decision of appeal, if any, and shall be executed in the manner provided in Section 79

thereof. Offences and penalties for infringement of copyrights or other rights conferred by the Copyright Ordinance are described in various provisions under Chapter XIV of the Copyright Ordinance, whereas, Section 72 thereof provides that no Court inferior to that of the Magistrate of First Class shall try any offence under the Copyright Ordinance. Sections 75 to 77 under Chapter XV of the Copyright Ordinance relate to appeals. The forum of appeal against certain orders of Magistrate is the Court to which such appeals would ordinarily lie. Appeal against any final decision or order of the Registrar is provided to the Copyright Board. Appeal against the decision or order of the Copyright Board, not being the decision or order made in an appeal under Section 76 of the Copyright Ordinance, is provided with the concerned High Court. Section 82 of the Copyright Ordinance vests rule making power to the Federal Government for carrying out purposes of the Copyright Ordinance. In exercise of such powers, the Copyright Rules, 1967 have been made which further elaborate procedure and requirements for enforcement of various rights under the Copyright Ordinance.

11. It follows from the above that a self-contained scheme of law is encapsulated in the Copyright Ordinance. The jurisdiction to administer the copyrights law is primarily vested in the office of the Registrar. The Copyright Board acts as an external independent forum to perform various functions, such as, to decide the sufficiency of quantity of copies of publications to the public under Section 4(2); if the term of copyright for any work is shorter in any other country than provided for in Pakistan under Section 6(2); the term of assignment under Section 14(2A); identity of the author under explanation to Section 21 and Section 59; objections qua published statements pursuant to Section 32 under Section 33; grant of licence in work withheld from public under Section 36; grant of licence to produce and publish translations under Section 37; correction of entries in the Register of Copyrights and indexes under Section 41(2); rate of royalties under Section 57(1)(j)(ii); suits or other civil proceedings under Section 65 in substitution of powers of the Court; appeals against the final

decision or order of the Registrar under Section 76; and the amount of compensation under Section 84(1) of the Copyright Ordinance.

12. It is manifestly clear that some of the functions assigned to the Copyright Board under the Copyright Ordinance do not involve instances of infringement of copyrights. However, the Copyright Board is also empowered to decide suits and civil proceedings involving infringement of copyrights or other rights flowing thereunder under Section 65 of the Copyright Ordinance. Similarly, it is empowered to hear appeals against final orders of the Registrar under Section 76 of the Copyright Ordinance without any distinction qua questions involving infringement or otherwise of copyrights. The bare perusal of Section 41(1) of the Copyright Ordinance reflects that the Registrar is empowered with respect to prescribed cases and subject to prescribed conditions, to amend or alter the Register of Copyrights and indexes by correcting any error in any name, address or particular; or correcting any other error which may have arisen therein by accidental slip or omission. However, Section 41(2) of the Copyright Ordinance confers broad, unlimited and comprehensive powers to the Copyright Board to pass an order with respect to rectification of the Register of Copyrights regarding the making of any entry wrongly omitted to be made or the expunging of any entry wrongly made in or, remaining on the Register or the correction of any error or defect in the Register. The Copyright Board is empowered to exercise such powers on application of the Registrar or of any person aggrieved in this respect. Once again, the power of rectification of the Copyright Board is general in character and does not distinguish between rectification applications *simpliciter* or based on allegations of infringement of copyrights or breach of intellectual property rights. The term ‘rectification’ is not specifically defined in the Copyright Ordinance, therefore, will necessarily entail ordinary dictionary meaning and in the context of the Copyright Ordinance, would mean that the Copyright Board can adjudicate all claims against the grant or refusal of registration of copyright or an interest therein on application of the Registrar or an aggrieved person with or without allegations of

infringement of intellectual property rights. Therefore, it is abundantly obvious that Copyright Board apart from other functions is also conferred with the jurisdiction to decide claims regarding infringement of copyrights under the Copyright Ordinance which includes rectification applications based on infringement of intellectual property rights.

13. The next question is to explore as to how the IPO Act as a subsequent enactment has affected powers of the Copyright Board as designated forum of remedy for all kinds of rectification applications under the Copyright Ordinance. The IPO Act was promulgated in the year 2012 with the primary objective to establish the IPO for protection of various intellectual property rights to foster creative thinking, stimulate creativity, provide incentives for technological innovations and attract investments. An institutional arrangement was designed in an endeavour to embrace exclusivity in terms of governance and regulation of multiple and various intellectual property rights being administered through isolated and fragmented intellectual property laws. The idea of a consolidated regulatory regime was realized by integration of Trade Marks Registry, Copyright Office and Patent Office established under different statutes with the IPO through Section 36 of the IPO Act which proclaims as such, notwithstanding anything contained in any other law for the time being in force and upon commencement of the IPO Act. Needless to state that the IPO Act is currently completely in force. Section 2(h) of the IPO Act defines ‘intellectual property laws’ as the laws specified in its Schedule which include the Trade Marks Ordinance, 2001 (the “**Trade Marks Ordinance**”), the Copyright Ordinance, the Patents Ordinance, 2000, the Registered Designs Ordinance, 2000, the Registered Layout-Designs of Integrated Circuits Ordinance, 2000 and specified provisions of Pakistan Penal Code, 1860. The IPO is established under Section 3 of the IPO Act and the policy board was setup under Section 4 thereof. Section 15 of the IPO Act stipulates powers and functions of the IPO which include some overarching and all-encompassing powers. Mention may be made to Section 15(viii) thereof which confers power upon the IPO to control,

manage, supervise, direct and coordinate the working of all intellectual property offices established under intellectual property laws and any other office or registry established under intellectual property laws to be notified by the Federal Government or any other registry or office as prescribed. Section 16 of the IPO Act establishes independent Tribunal(s) to exercise jurisdiction under the IPO Act. Section 17 of the IPO Act vests powers in the Tribunal(s) under the Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1898 with respect to exercise of civil and criminal jurisdictions, respectively. Section 17(4) thereof provides that subject to Sub-Section (5) thereof, no Court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which jurisdiction of the Tribunal extends under the IPO Act. Sub-Section (5) thereof further provides that nothing in Sub-Section (4) shall be deemed to affect any proceedings pending before such Court immediately before coming into force of the IPO Act. Sub-Section (6) thereof states that all suits and proceedings pending in any Court instituted under intellectual property laws shall stand transferred to, and be heard and disposed of by, the Tribunal(s) having jurisdiction under the IPO Act. Section 18(1) of the IPO Act unequivocally proclaims that all suits and other civil proceedings regarding infringement of intellectual property laws shall be instituted and tried in the Tribunal, whereas, Section 18(2) thereof starts with the non-obstante clause and clarifies that notwithstanding anything contained in any other law for the time being in force, the Tribunal shall have exclusive jurisdiction to try any offence under intellectual property laws, thereby, reinforcing the principle enshrined in Section 15 thereof which states that notwithstanding anything contained in any other law for the time being in force, an accused shall be tried and prosecuted for an offence in the Tribunal. Section 19 relates to appeals and grants the right to any person aggrieved by the final judgment or order of the Tribunal to prefer an appeal to the High Court having territorial jurisdiction over the Tribunal. Section 39 of the IPO Act undoubtedly accepts the preemptive nature of the IPO Act by stating that its provisions shall have effect, notwithstanding

anything inconsistent therewith, contained in any other law for the time being in force.

14. Therefore, it is vividly evident that purpose of the IPO Act as a subsequent enactment to all other intellectual property laws included in its Schedule is to regulate all such laws under the umbrella of the IPO. Another inevitable result derived from its examination is that multiple forums to adjudicate civil rights and offences under the existing intellectual property laws were eliminated and consolidated by way of vesting conclusive jurisdiction in respect thereof in the Tribunal in terms of Section 18 of the IPO Act read with Section 39 thereof with a right of appeal before the concerned High Court. The conspicuous absence and presence of non-obstante clause in Sections 18(1) and 18(2) of the IPO Act, respectively, implies that dedicated forums under intellectual property laws competent to adjudicate civil proceedings not involving questions of infringement of intellectual property laws can still decide such cases but in case of civil proceedings, wholly or partly, involving determination of any allegation of infringement of intellectual property laws, such forum will be divested of its jurisdiction which will vest in the Tribunal. On the other hand, the Tribunal will have absolute jurisdiction to try any offence under Section 18(2) of the IPO Act. Hence, the Copyright Ordinance must be construed subservient and subordinate to the provisions of the IPO Act to the extent that the latter explicitly or impliedly repeals the former. For example, the Copyright Ordinance establishes an independent Copyright Office under the control and superintendence of the Registrar of Copyrights but the IPO Act explicitly integrates the Copyright Office with the Trade Mark Registry and Patent Office established under different prior enactments and integrates them with the IPO vesting regulatory powers in the latter. Similarly, there is no ambiguity that jurisdiction of all forums with respect to all suits and civil proceedings regarding infringement of intellectual property laws and that of Magistrate qua offences under the Copyright Ordinance was clearly taken away by the IPO Act by vesting jurisdiction regarding the same with the Tribunal.

15. The riddle that now seeks resolution is how the jurisdiction of the Copyright Board under Section 41(2) of the Copyright Ordinance to rectify entries in the Copyright Register was affected by the IPO Act as a subsequent legislation vesting exclusive jurisdiction to the Tribunal to adjudicate all suits and civil proceedings regarding infringement of intellectual property laws. The most relevant case in this respect is that of Shaheen Chemist (supra) which explored the jurisdiction of the Tribunal under the IPO Act vis-à-vis the power of revocation of registration of Trade Mark, invalidity of registration of Trade Mark and suits of infringement of Trade Mark or any right emanating therefrom in terms of Sections 73, 80 and 117, respectively of the Trade Marks Ordinance. Sections 73 and 80 of the Trade Marks Ordinance also confers jurisdiction to the Registrar appointed under the Trademark Ordinance to hear and decide matters regarding revocation and invalidity of registration of Trade Marks apart from the jurisdiction vested in different Courts under specified conditions. The High Court undertook a comparative analysis of the IPO Act with the Trade Marks Ordinance in the light of case law and opined that use of word ‘infringement’ in Section 18(1) of the IPO Act is used in ordinary dictionary meaning as the term is not defined in the IPO Act which implies that the Tribunal under the IPO Act has the exclusive jurisdiction regarding all actions for breach and infringement of various provisions of intellectual property laws, as such, all such suits and proceedings fall within jurisdiction of the Tribunal alone. It was further held that the legislative intent in promulgating the IPO Act is that there should not be piecemeal adjudication qua breach or infringement of intellectual property rights, rather, the same should be conclusively and completely adjudicated by one forum which intent is manifest from Section 18 read with Section 39 of the IPO Act. As such, the doctrine of implied repeal was invoked based on the principles of interpretation endorsed by the Supreme Court of Pakistan in case titled, “Messrs Federal Bank for Cooperatives versus Commissioner of Income Tax, Companies Zone” (2021 PTD 1203) to hold that all suits and other proceedings

involving infringement of intellectual property rights seeking enforcement of statutory remedies provided under intellectual property laws incorporated in the Schedule of the IPO Act will include such cases regarding revocation or invalidity of registration of Trade Marks under the Trade Marks Ordinance and fall within the competence and jurisdiction of the Tribunal under the IPO Act.

16. The Supreme Court of Pakistan in case titled, “Muhammad Multazam Raza versus Muhammad Ayub Khan and others” (**2022 SCMR 979**) while dilating upon the exclusive jurisdiction of the Tribunal remarked that suit alleging infringement of Trade Mark accompanied with allegation of passing off would also fall within the domain of the Tribunal. In this context, it was observed that a passing off action may either be a passing off action *simpliciter* or an action of infringement of Trade Mark coupled with passing off. The second category of cases would fall within the jurisdiction of the Tribunal, notwithstanding that allegations in the suit were coupled with the allegation of passing off. The same principle was enunciated by the Sindh High Court in case titled, “Mahile Engine Components Japan Corporation versus Azam Autos and others” (**Suit No. 2058 of 2019**), wherein, it was held that the Tribunal under the IPO Act is empowered to deal with all matters relating to intellectual property laws which shall include matters relating to intellectual property rights in an integrated manner and for matters concerned therewith or incidental therewith, as such, it is not permissible to file a claim before another forum under such laws, a part whereof, is based on allegation of infringement of an intellectual property right under such laws since in such an eventuality, the purpose of providing a specialized forum to decide such disputes under the IPO Act would be lost.

17. The above analysis leads to consider as to how and to what extent, the provisions of Section 41(2) of the Copyright Ordinance can be reconciled with the IPO Act by harmonious construction of both statutes. Conversely, to what extent, the provisions of Section 41(2) of the Copyright Ordinance are so inconsistent with the IPO Act that the former

under the doctrine of implied repeal have to give way to the latter to prevail. For the purposes of reconciliation of Section 41(2) of the Copyright Ordinance with the IPO Act, all cases of rectification can be conveniently divided into two categories. The first category of cases is of rectification *simpliciter*, being not based on any allegation of infringement or breach of any other intellectual property right under intellectual property laws included in the Schedule of the IPO Act. The second category of cases is of rectification based on any allegation of infringement or breach of any other intellectual property right under intellectual property laws included in the Schedule of the IPO Act. The determination of rectification cases by the Copyright Board falling in the first category does not create any inconsistency with the jurisdiction of the Tribunal under the IPO Act which can be conveniently decided by the Copyright Board. However, there is an obvious and irreconcilable inconsistency with respect to second class of cases of rectification based on allegations of infringement of any existing intellectual property right under intellectual property laws included in the Schedule of the IPO Act. Therefore, it is safely concluded that where a rectification application contains allegations of infringement or breach of intellectual property rights under intellectual property laws included in the Schedule of the IPO Act, the jurisdiction to decide such an application would vest with the Tribunal in terms of Sections 17, 18 and 39 of the IPO Act.

18. The above finding obligates to discover nature of claim of the Respondents against the Appellant put forward in the rectification application. It is not the case of the Respondents that due procedural process was not followed by the Registrar of Copyrights while granting copyright of the Poetry Book to the Appellant, rather, the Respondents primarily assert that while granting copyright to the Appellant, the contents of the Poetry Book were not properly scrutinized, the Poetry Book did not consist of authentic and original work of the Appellant and the same contains plagiarized and copied content of other authors and singers. In the written objections filed on behalf of the Respondents, it has been admitted

by the Respondents in para No. 5 thereof that the Appellant has stolen, infringed and plagiarized the music, songs, poetry, poems and *ghazals* of other writers, poets and singers including Shaukat Ali (singer), Akhtar Hussain (poet), Allah Ditta Khakhi (poet) and Inayat Ali (poet), as such, others are victim of the Appellant. These poets, singers and musicians have sold their intellectual property rights to the Respondents, therefore, no one could be more aggrieved from the act of registration of copyright in favour of the Appellant than the Respondents because the said act of the Appellant has directly affected the music business of the Respondents. Hence, the copyright was erroneously granted to the Appellant which is liable to be rectified by way of cancellation and expunction. The record also depicts that the Appellant has filed declaratory suits before the Tribunal seeking various declarations against the Respondents in which one of the issues under adjudication is as to whether the Appellant holds copyright qua his Poetry Book and the Respondents are infringing his intellectual property rights. Therefore, the claim of rectification of copyright filed by the Respondents seeking cancellation of entry of copyright made in favour of the Appellant, in essence, is not rectification *simpliciter* but is based on allegations of infringement and breach of intellectual property rights of other authors and singers allegedly protected under intellectual property laws included in the Schedule of the IPO Act which could not be determined without deciding such allegations of infringement of intellectual property rights. Needless to reiterate that the jurisdiction to decide such a rectification application coupled with allegations of breach of intellectual property rights under intellectual property laws included in the Schedule of the IPO Act exclusively rests with the Tribunal created and existing under the IPO Act.

19. During the pendency of this Appeal, C.M. No. 3-C / 2022 was filed by the Applicant, namely, S. M. Sadiq under Order I, Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 seeking to become a party in the titled Appeal as Respondent No. 3 on the grounds, *inter alia*, that he is a well-known poet and his literary works, under necessary

permission, have been used by some of the greatest and best singers, musicians and artists but the Appellant has stolen and plagiarized multiple poems of the Applicant and included the same in his Poetry Book; the Applicant has assigned some of his intellectual property rights qua his works to the Respondents which have been infringed by the Appellant by fraudulent act of registering his copyright, thereby, causing financial loss to him; and the Applicant has also filed a rectification application before the Copyright Board at Karachi coupled with a suit for declaration with multiple reliefs before the Tribunal against the Appellant. Therefore, the copyright entry of Poetry Book in favour of the Appellant is liable to be quashed and cancelled and the Applicant is a necessary and proper party who is entitled to be impleaded as Respondent No. 3 in the titled Appeal.

20. It is evident from bare perusal of the contents of this application that the Applicant is also seeking infringement of his intellectual property rights against the Appellant regarding which he has statedly availed independent remedies. Even otherwise, claim of the Applicant also suffers from the same jurisdictional defect as the claim of the Appellant in the titled Appeal. Therefore, the Applicant is not a necessary and proper party in the titled Appeal and the application is **dismissed**, accordingly.

21. For the reasons recorded above, this Appeal is **allowed** and the impugned Order is set aside having been passed by the Copyright Board without jurisdiction. The Respondents and / or the Applicant are, however, free to pursue their respective claims before the Tribunal subject to all just and legal exceptions. No order as to costs.

(ABID HUSSAIN CHATTHA)

Judge

Approved for reporting

Judge

Announced in open Court on 28-07-2024

Judge