

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

F.A.O.No.32 of 2016
Hassan Zia & another
Versus.

Mrs. Umera Arsam and others

Date of Hearing: 10.06.2016
Appellant by: M/s Umar Sohaib Pirzada, and Faisal Iqbal
Khan, Advocates
Respondent No.1 by: Dr. Khalid Ranjha, learned ASC

MIANGUL HASSAN AURANGZEB, J:-Through the instant appeal under Section 19 of Intellectual Property Organization of Pakistan Act, 2012, (“IPOP Act”), the appellants, Hassan Zia and Babar Javed, impugn the order dated 18.02.2016, passed by the Court of the learned Additional District Judge, Islamabad (exercising the powers of Intellectual Property Tribunal under the provisions of IPOP Act), allowing Mrs. Umera Arsam/respondent No.1’s application under Order XXXIX Rules 1&2 Code of Civil Procedure, 1908 (C.P.C.) filed along with her suit for permanent injunction, damages, recovery of possession under Sections 60, 63 and 65 of the Copyright Ordinance, 1962.

2. Respondent No.1 has authored a novel called “Thoda Sa Aasman”, which, she claims is protected by copyright. In 2008, respondent No.1 wrote a script for a drama, by the same name as the novel and based on the novel. This script was sold to respondent No.2 (Pakistan Television Corporation), which aired the drama in 2009. Under the agreement between respondent No.1 and respondent No.2, the latter gained proprietary rights over the said script. In 2005, the appellants, with the consent of respondent No.2, have 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 mentioned suit. Along with the said suit, respondent No.1 filed an application for interim injunction. Vide order dated, 18.02.2016, the learned trial Court allowed the said application. The said order has been impugned by the appellants in the instant appeal.

3. 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 broadcast 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.

4. 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 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 is not maintainable. Furthermore, learned counsel for respondent No.1 submitted that as the appellants had been proceeded against ex-parte before the learned trial court, and that since their application to set-aside the order whereby they were proceeded against ex-parte has, till date, not been decided, the appeal is liable to be dismissed. Learned counsel prayed for the dismissal of the appeal on these grounds only.

5. Learned counsel for respondent No.1 submitted that a right of appeal has to be expressly conferred by statute. He referred to Section 67(3) of the Representation of Peoples Act, 1976, Section 23 of the Pakistan Environmental Protection Act, 1997, and Section 33 of the Punjab Consumer Act, 2005 to demonstrate that a right of an appeal against the orders passed by tribunals created by law, has to be expressly conferred. He also made reference to Section 28 of the Punjab Rented Premises Act, 2009 and Section 14 of the West Pakistan Family Courts Act, 1964 to show that a right to file an appeal against an interim/interlocutory order can be excluded by statute.

6. 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 is protected.

7. In rebuttal, the learned counsel for the appellants placed reliance on the cases of Khadim Hussain Vs. The Additional District Judge, Faisalabad (PLD 1990 Supreme Court 632), Muhammad Musa Ansari Vs. Gul Sahib Jan Khattak (1991 CLC 1483), Rauf B. Qadri Vs. State Bank of Pakistan (PLD 2002 Supreme Court 1111), Zahid Zaman Khan Vs. Khan Afsar (PLD 2016 Supreme Court 406), and District Council Haripur Vs. Zaheer Ullah Khan (PLD 1994 Peshawar 228), 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 not to thwart the same.

8. It may be mentioned that when the instant appeal was first taken up for hearing on 06.04.2016, this Court issued notices to the respondents, without suspending the operation of the impugned order dated 18.02.2016. Again on 13.04.2016, the appellants' request for the suspension of the said order dated 18.02.2016 was not entertained. On 18.04.2016, the learned counsel for the appellants submitted that the appellants had no

intention of changing or modifying the script but were intending to reset the drama in a new environment with advance technology. On the said date, the following order was passed:-

“During the course of the arguments, the learned counsel for contesting parties were in unison on their submission that the script of the drama under the name of “Thoda Sa Aasman” had been sold by respondent No.1 to respondent No.2 in the year 2008 and that the drama was aired by the said respondent No. 2 during the year 2008/2009. As per the agreement between the respondents, No.1 & 2 all rights with respect to the thereafter vested in respondent No.2 which had the authority to sell or lease the script. The concern of respondent No.1 is not the sale of the said script by respondent No.2 to any third party but that the said script should not be in any manner be modified so as to include passages or portions of the novel authored by respondent No.1 which has the same name as the drama.

Learned counsel for the appellants submits that they have absolutely no intention of changing or modifying the script but the drama is going to be reset in a new environment with advanced technology.

A copy of the script which was sold by respondent No.1 to respondent No.2 shall be handed over to respondent No.1’s counsel only for the purpose of verifying as to whether it is the same script which had been sold to respondent No.2. As long as the script is not changed or modified, respondent No.1 does not have any grievance. Let the needful be done.”

9. On 25.04.2016, the learned counsel for respondent No.1 submitted that a copy of the script was given to respondent No.1, and that she was well aware of the import of the order dated 18.04.2016. However, respondent No.1 had expressed her desire to engage the services of some other counsel. Respondent No.1’s husband was in attendance and sought time to engage the services of another counsel. As respondent No.1, after having been given a copy of this script of the drama intending to be telecast, had not taken a position as to whether this script had been changed or modified, this Court suspended the operation of the impugned order.

10. I have heard the arguments of the learned counsel for the contesting parties and have perused the record with their able assistance.

11. I first propose to deal with the preliminary objections raised by the learned counsel for respondent No.1. Section 19 of the IPOP Act, is reproduced herein below:-

“19. Any person aggrieved by the final judgment and order of the Tribunal under this Act may, within thirty days of the final

judgment or order of the Tribunal, prefer an appeal to the High Court having territorial jurisdiction over the Tribunal.”

12. The right to file an appeal is a substantive right, and has to be specifically conferred by a statute. It is not a matter of procedure. Now under Section 19 *ibid* a person aggrieved by a “*final judgment and order*” of the Intellectual Property Tribunal can file an appeal before the High Court. Section 17 of the IPOP Act, *inter alia* provides that in an Intellectual Property Tribunal shall, in exercise of its civil jurisdiction have all the power vested in a civil court under the C.P.C. Furthermore, in all matters the said tribunal is to follow the procedure laid down in the C.P.C., if the procedure has not been provided for in the IPOP Act. Thus the Intellectual Property Tribunal, while exercising powers under the C.P.C., can pass all order that a civil court can pass. This is subject to the caveat that the IPOP Act does not provide for a procedure different from that provided for in the C.P.C. Neither has the term “final judgment”, nor the term “order” being defined in the IPOP, Act. Section 19 of the IPOP Act is an enabling provision for filing an appeal, and does not explicitly bar an appeal from an interlocutory order. It is not disputed that the impugned order dated 18.02.2016 has finally disposed of respondent No.1's application under Order XXXIX, Rules 1 and 2 C.P.C. In view of the law laid down by the superior courts that a provision barring a right of appeal has to be strictly construed, the term “final judgment” and “order” have to be read disjunctively. I am therefore of the view that an appeal against the order allowing respondent No.1's application for interim injunction is maintainable under Section 19 of the IPOP. A reference to the following case law at this stage would be apposite:-

(i) In the case of Shafique Ahmad Butt Vs. Punjab Labour Appellate Tribunal (1993 CLC 1352), it has been held as follows:-

“8. ...according to well-settled rule of interpretation of statutes, every provision which has the effect of taking away the right of appeal is to be construed strictly and in case there is any doubt as to the availability of the right of appeal that doubt is to be resolved in favour of the existence of the right of appeal. Reference may be made to Muhammad Hussain v. The Additional District Judge [PLD 1986 Lah. 128] and Wahid Bus

and Mailsi Transport Co. Ltd. V. Afzal Transport Co. Ltd. [PLD 1966 Lah. 684]”

(ii) In the case of University of Punjab Vs. Rehmatullah (PLD 1982 Lahore 729), it has been held as follows:-

“In any case right of appeal in the absence of provision to the contrary cannot be impliedly presume to have been taken away and if there is any doubt as to existence of right of an appeal, then the doubt is to be resolved in favour of the party seeking the appeal.”

(iii) In the case of Amjad Mustafa Vs. Muhammad Faiz (2005 YLR 419), the Division Bench of the Hon'ble Lahore High Court has held as follows:-

“10....it is settled rule of interpretation of statute that every provision, which has the effect of taking away the right of appeal is to be construed strictly and in case there is any doubt as to the availability of right of the appeal that doubt be resolved in favour of the existence of right of appeal. In arriving to this conclusion we are fortified by the following judgments:--

- (1) Shafique Ahmad Butt v. Punjab Labour Appellate Tribunal and others 1983 CLC 1352.*
- (2) University of the Punjab and 2 others v. Rehmantullah PLD 1982 Lahore 729.*
- (3) Mumtaz Khan v. Chief Settlement and Rehabilitation Commissioner and another PLD 1966 SC 276.*
- (4) Syed Arif Raza Rizvi v. Messrs Pakistan International Airlines through Chairman/M.D. Karachi PLD 2001 SC 182.*
- (5) Messrs Modern Continental Business (Pvt.) Limited through Chief Executive v. Government of Pakistan through Secretary, Ministry of Finance, Revenue and Economic Affairs, Pak Secretariat, Islamabad and another 2002 CLC 233.”*

13. Furthermore, a read of Section 19 of the IPOP Act, and its comparison with the following laws which bar an appeal against an interim/interlocutory order shows that the right to file an appeal against an interlocutory order passed by the Intellectual Property Tribunal has not been explicitly barred:-

1	S.24 of Cantonments Rent Restriction Act, 1963	24. Appeal. (1) <u>Any party aggrieved by an order, not being an interim order, made by the Controller may, within thirty days of such order, prefer an appeal to the High Court.</u>
2	S.12, Banking Companies (Recovery of Loans) Ordinance, 1979	12. Appeals.--(I) Any person aggrieved by any order, judgment, decree or sentence of a Special Court may, within thirty days of such order, judgment, decree or sentence, prefer an appeal to the High Court within whose

		jurisdiction the order, judgment, decree or sentence is passed; <u>Provided that no appeal shall lie from an interlocutory order which does not dispose of the entire case before the Special Court.</u>
3	S.21(2) of Islamabad Rent Restriction Ordinance, 2001	21. Appeal. (1) Any party aggrieved by a final order of the Controller made under this Ordinance may, within thirty days of the date of such order, prefer an appeal to the District Judge. <u>(2) No appeal shall lie from an interlocutory order passed by the Controller.</u> (3) (4) (5) (7) (8)"
4	S.3(2) of the Law Reforms Ordinance, 1972	3. Appeal to High Court in certain cases. —(1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction. (2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a single Judge of that Court under clause (1) of Article 199 of the Constitution of the Islamic Republic of Pakistan not being an order made under sub-paragraph (i) of paragraph (b) of that clause: Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article 199 arises out of any proceedings in which the law applicable provided for at least one appeal or one revision or one review to any court, tribunal or authority against the original order. <u>(3) No appeal shall lie under sub-section (1) or sub-section (2) from an interlocutory order or an order which does not dispose of the entire case before the Court....."</u>
5	S.14(3) of the West Pakistan Family Courts Act, 1964	14.Appeal. --- (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable---

		(a).... (b).... (2).... (a).... (b).... (c).... <u>(3) No appeal or revision shall lie against an interim order passed by a Family Court...."</u>
6	S.15 of West Pakistan Urban Rent Restriction Ordinance, 1959	15. Appeal-- (1) Any party aggrieved by an order made by the Controller under Section 4, Section 10, Section 12 or Section 13 may, within thirty days of the date of such order, prefer an appeal in writing to the District Judge having jurisdiction over the area where the building or rented land, in relation to which the order is assed, is situated; Provided that no appeal shall lie against an order made by Collector under sub-section (6) of Section 13 determining approximately the amount of rent due or the rate of rent and directing the tenant to deposit all the rent due; Provided further that no appeal shall lie from an interlocutory order passed by the Controller.
7	S.21 (5) of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Ordinance 1997	21. Appeal.--(1) (2)..... (3)..... (4).... <u>(5) No appeal, review or revision shall lie against an interlocutory order of the Banking Court other than an order passed under sub-section (6) of Section 18.</u>

14. As regards the contention of the learned counsel for respondent No. 1 that since the appellants are being proceeded against ex-parte by the learned trial court, this appeal is liable to be dismissed, has also not impressed me. The impugned order was passed prior to the appellants being proceeded against ex-parte. The appellants' application for the recall of the order (whereby the appellants proceeded against ex-parte) is pending before the learned trial court. Therefore, this appeal cannot be dismissed due to the mere fact that the appellants have been proceeded against ex-parte.

15. Coming to the merits of the case, the record shows that during 2005, respondent No.1 wrote a novel called “Thoda Sa Aasman” and had it published. Subsequently, respondent No.1 entered into an agreement with respondent No.2/Pakistan Television Corporation for the dramatization of the said novel for airing as a drama. As per the terms of the agreement, respondent No.2 was entitled to repeat telecasts and sell the program both locally and abroad without payment of royalty. Clause 21 of the said agreement is reproduced herein below:-

“21. All scripts, characters and performance under this agreement will be the property of the Corporation. Script writers or artists will have no right to use, sell or lease such scripts, characters and performances to any other party. The Corporation may at its sole discretion, allow the use of such scripts, characters or performances to any person or organization against payment to the corporation of such royalty as it may deem fit.”

16. Respondent No.1 with her suit annexed the terms and conditions of the agreement. Respondent No.1 has taken the position that she had not transferred copyrights of her novel to the appellant, and that the subject matter of the agreement was limited to the ‘script’ and ‘unpublished work’. It is not disputed that respondent No.1 wrote a 26 episode script in 2008, and the drama was shot and aired in 2009. Respondent No.1 was paid for every episode. Respondent No.1’s grievances began when she came to know about the steps that were being taken to dramatize her novel by changing the script which was in possession of respondent No.2. These steps were alleged to have been taken by the appellants and respondents No.2 and 3. This caused respondent No.1 to file a suit on 13.08.2015, before the Court of the learned Additional District Judge, Islamabad. Respondent No.1 maintains that she did not transfer any copyright of her novel to any person, and that the appellants and respondents No.2 and 3 were infringing her copyright by dramatizing her novel.

17. Vide order dated 18.02.2016, the learned trial court allowed respondent No.1’s application for temporary injunction as prayed for. In the said application, respondent No.1 prayed for the defendants in the suit to be restrained from the following:-

*“(a) Broadcasting the drama on any of the channels or entering into any agreement or negotiations for broadcasting the same;
(b) Using, distributing, supplying or providing copies of the infringing script or the produced drama from the said infringing script or any part thereof – whether modified or unchanged and whether in lieu of or without consideration to any person or entity whatsoever; and
(c) Further copying, adapting, changing, distorting or modifying the plaintiffs’ novel;”*

18. Perusal of the impugned order dated 18.02.2016, shows that the learned trial court, while giving its findings on respondent No.1’s application for interim injunction, has not adverted to the terms and conditions of the agreement that had taken place in 2008 between respondent No.1 and respondent No.2. As mentioned above, these terms and conditions were filed by respondent No.1 along with her suit. The preamble, and clause 21 of the said agreement (extracted above) shows that respondent No. 2 had purchased the script of the drama “Thoda Sa Aasman”, from respondent No.1, whereafter the same became the property of respondent No.2, who had the right to allow the use of the said script, characters or performances to any other person or organization. In this view of the matter, I am of the view that the appellants and respondents No.2 and 3 could not be restrained from using the script which had been sold by respondent No.1 to respondent No.2 in 2008. However, the appellants and respondents No.2 and 3 could not tamper with or change around the script, which had become respondent No.2’s property. A changed/altered script would give respondent No.1 a cause to seek a restraint against the use of the same. However, the adaptation of the original script to modern technology with new characters and in a new setting does not *prima facie* violate respondent No.1’s rights.

19. From the perusal of the documents on record and after hearing the learned counsel for the contesting parties, I have 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. Subject to proof before the learned trial Court, respondent No.1 may be enjoying the copyright regarding her novel “Thoda Sa Aasman”. However,

assuming that the copyright with respect to the novel is protected, respondent No.1 cannot make any grouse against the appellants or respondent No.2 and 3 for using the script for the drama called “Thoda Sa Aasman” which she had sold in 2008 to respondent No.2. The appellants and respondent No.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 respondent No.2 and 3 from using the same script in a drama with new characters and new technology in a modern setting.

20. In view of the above the instant appeal is partly allowed and the interim order is modified to the extent that defendants in the suit are 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. Needless to mention that the observations made herein shall not be taken into account by the learned trial Court in deciding the suit filed by respondent No.1.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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