

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

ICA No.102/2019
Dr. Syed Iqbal Raza
versus
Justice of Peace, etc.

Appellant by: Raja Rizwan Abbasi, Mr. Sohail
Akhtar, and Ms. Naila Noreen,
Advocates.

Respondents by: Malik Sajid/Inspector, FIA/ACC,
Islamabad Zone.

and

ICA No.103/2019
Dr. Syed Iqbal Raza
versus
Siemens (Pakistan) Engineering Co. Ltd., etc.

Appellant by: Raja Rizwan Abbasi, Mr. Sohail
Akhtar, and Ms. Naila Noreen,
Advocates.

Respondents by: Barrister Salman Safdar and
Barrister Usman Sahi, Advocates
for respondents No.1 to 4.
Malik Sajid/Inspector, FIA/ACC,
Islamabad Zone.

Date of Decision: 30.05.2019.

MOHSIN AKHTAR KAYANI, J: Through this single judgment,
we intend to decide the captioned intra court appeals as common
questions of law and facts are involved in both these intra court appeals.

2. Through the captioned intra court appeals, the appellant has
called in question consolidated judgment dated 21.02.2019,
passed by learned Single Judge in Chambers in W.P. No.3750/2018 and
W.P. No.2633/2018, whereby writ petition of present appellant i.e.
W.P. No.3750/2018 has been dismissed, while writ petition filed by

Siemens (Pakistan) Engineering Co. Ltd. i.e. W.P. No.2633/2018 has been allowed.

3. Brief facts as cited in the instant appeals are that appellant filed a complaint before FIA authorities for registration of FIR against M/s Siemens (Pakistan) Engineering Co. Ltd. (*hereinafter referred to as "respondents"*) for illegally using appellant's intellectual property rights and other copyrights as safeguarded under the Copyright Ordinance, 1962 with the name of "Dr.Sir104". Accordingly, the FIA authorities initiated inquiry against the respondents for the alleged infringement of intellectual property rights of appellant, whereupon the respondents filed W.P. No.263/2018 before this Court for declaring the said inquiry as without jurisdiction and lawful authority. In the meanwhile, appellant filed an application under Section 22-A Cr.P.C. before learned Justice of Peace, which was dismissed vide order dated 02.10.2018, whereupon appellant filed W.P. No.3750/2018. Both these writ petitions were consolidated, which were decided by the learned Single Judge in Chambers vide impugned consolidated judgment dated 21.02.2019, whereby writ petition of respondent was allowed and the inquiry was declared as without lawful authority, whereas the writ petition of appellant was dismissed. Hence, the instant intra court appeals.

4. Learned counsel for appellant in the captioned intra court appeals contended that the learned Single Judge in Chambers did not observe the Federal Investigation Agency Act, 1974 and passed the impugned judgment; that the impugned judgment is violative of legislative intent as apart from Emigration Ordinance many other cases like Passport Act,

Drugs Act, Pakistan Telecommunication (Re-organization) Act, 1996, etc. have usually no nexus with the affairs of Federal Government or ancillary matters thereto; that the learned Single Judge in Chambers has relied upon judgments of Hon'ble Supreme Court, which have nothing to do with the case in hand; that as per clause 26 of the schedule, the entire Copyright Ordinance has been made part and brought within the domain of the FIA; that the learned Single Judge in Chambers has misread Section 13 of the Intellectual Property Organization of Pakistan Act, 2012 with respect to exclusive jurisdiction; that powers and functions of the IPO to initiate inquiries are limited to where a civil offence is committed, while when a criminal offence/cognizable offence under the Copyrights Ordinance is apprehended, only the federal law enforcement agency or FIA conduct such inquiry or investigation; that the learned Single Judge in Chambers has not properly dilated upon the situation and accepted the arguments raised by the other side and contention of appellant was not looked into; that impugned judgment is not in consonance with law, therefore, the same may be set-aside.

5. Conversely, learned counsel for respondents No.1 to 4 contended that FIA has no jurisdiction in the matter as held by the apex Court in recent judgments reported as 2017 SCMR 1218 (Syed Mushahid Shah, etc. vs. FIA, etc.), 2016 SCMR 447 (DG FIA, etc. vs. Kamran Iqbal, etc.), 2010 PCr.LJ 518 (The State vs. Muhammad Amin Haroon, etc.), 2001 PCr.LJ 146 (Iftikhar Hussain, etc. vs. Government of Pakistan, etc.), and 2017 CLD 519 (The State vs. Azmat Ali, etc.); that in cases where the Federal Government is involved in any way, only then the FIA can intervene into the matter,

which is not the case in the present matter; that neither the appellant nor the respondents have any nexus with the Federal Government as the parties are private and the dispute is of a civil nature; that the FIA Act, 1974 is not applicable anymore for copyright matters for the reason that a special law namely Intellectual Property Organization of Pakistan Act, 2012 has been enacted to deal with such matters; that the learned Single Judge in Chambers has rightly dismissed the writ petition of appellant vide impugned judgment, which does not suffer from any illegality.

6. Arguments heard, record perused.

7. The perusal of record reveals that the appellant in both the ICAs is aggrieved with the judgment dated 21.02.2019, passed by the learned Single Judge in Chambers in W.P. No.3750/2018 & W.P. No.2633/2018. Preliminary issue raised by the appellant is regarding infringement of his intellectual property rights by the respondent (M/s Siemens (Pakistan) Engineering Co. Ltd) regarding which he moved a complaint before the FIA Authorities with the allegation that his copy rights under the name and style of "Dr.Sir104" have been infringed and prayed for initiation of inquiry against the respondent. Learned Ex-officio Justice of Peace passed the order, whereby FIA initiated inquiry. In the second W.P. No.2633/2018 respondent M/s Siemens (Pakistan) Engineering Co. Ltd assailed the notice issued by the FIA Anti-Corruption Circle bearing No.FIA/DD/ACC/RE-47/2018/638 and FIA/DD/ACC/RE-47/2018/636 dated 09.05.2018 requiring the attendance of respondent in the office of FIA in the impugned inquiry No.RE-47/2018.

8. While dealing with the said proposition learned Judge-in-Chambers has considered all aspects of intellectual property laws as well jurisdiction of FIA under the FIA Act, 1974.

9. We have asked learned counsel for the appellant to produce some document through which it could be assumed that he has intellectual property of "Dr.Sir104" whereby, he has placed reliance upon a circular dated 06.02.2008 issued by the Registrar of Copyrights under registration No.17161 and contends that his copyrights have been infringed by the respondent and in the earlier round of proceedings in USA, on 30.09.2013 a settlement agreement was executed whereby, Siemens Medical Solutions USA, Inc and Siemens Pakistan Engineering Co. Limited entered into settlement with Dr. Syed Iqbal Raza, wherein alternate dispute resolution mechanism has been imbedded in the said agreement. However, after the settlement of said agreement appellant has filed fresh complaint against the respondent Siemens Pakistan Engineering Co. Limited for criminal prosecution which resulted into different proceedings and culminated into impugned judgment.

10. Preliminary issue before the learned Single Judge in Chambers was to settle the question of jurisdiction of FIA in terms of Intellectual Property Laws and Copyright Ordinance, 1962. Learned Single Judge in Chambers has compared the statutes independently in para-8 of the impugned judgment, relevant extract is reproduced herein below:-

"In this behalf, Section 17 of the referred Act provides that Tribunal shall, in exercise of its criminal jurisdiction, try offences made punishable under this Act and for the said purpose, can exercise same power vested in the Court of Sessions under the Criminal procedure Code, 1898. Under subsection (4) of Section 17, it is provided that no court, other than the Tribunal, shall have or exercise any jurisdiction with respect to any matter, to which the jurisdiction of the Tribunal

extends under this Act. By virtue of referred position, the Tribunal has been conferred with the power to try an offence. Similar exclusivity of jurisdiction is provided in subsection (2) of Section 18 of 2012 Act. Likewise, section 143 provides power and functions of Intellectual property Organization under sections 13(xix) & (xx), the Organization has the exclusive power to initiate and conduct inquiries/investigation/proceedings relating to the offences in the prescribed manner. This also shows that Intellectual property Organization has the authority to investigate into the offences arising out of Copy Right ordinance, 1962."

11. Besides the above said position, learned Single Judge in Chambers has relied upon 2016 SCMR 447 titled Director General, FIA etc...vs...Kamran Iqbal, etc in which due weightage has been given to the FIA Act which provides constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government and for matters connected therewith.

12. In view of above referred concept, jurisdiction of FIA is in exclusivity with the affairs of Federal Government although Copyright Ordinance, 1962 has been referred at serial No.26 of the schedule of FIA Act which deals with the offences punishable under Copyright Ordinance, 1962 however, this does not mean that any matter could have been agitated under the said hierarchy. Similarly, learned Single Judge in Chambers has relied upon 2010 PCr.LJ 518 titled The State through Deputy Attorney General...vs...Muhammad Amin Haroon, etc. in which it has been held that FIA having been given the concurrent jurisdiction, can take cognizance of such cases where violation of some government work is involved and has no jurisdiction in respect of infringement of Copyright between private parties or disputes, which are civil in nature.

13. The issue involved in the captioned ICAs revolves around the alleged infringement of intellectual property rights and other copyrights. At the same time, the core issue which requires deeper consideration is

as to which of the investigating agency is competent to investigate such like issues? In order to reach at a just and fair conclusion, we have meticulously perused the “Intellectual Property Organization of Pakistan Act, 2012”. Section 13 of the Act *ibid* relates to “Powers and Functions of the Organization”. Whereas, Section 13(xix) and (xx) of the Act reads as under:

“13. Powers and Functions of the Organization:--- The powers and functions of the Organization shall be to---

(xix) initiate and conduct inquiries, investigations and proceedings related to offences in the prescribed manner.

(xx) refer matters and complaints, related to offences under the laws specified in the schedule to the concerned law enforcement agencies and authorities as may be necessary for the purposes of this Act.

(Underlining is for emphasis)

Whereas, in the schedule of Intellectual Property Organization of Pakistan Act, 2012 “The Copyright Ordinance, 1962 (XXXIV of 1962)” is mentioned at Sr. No.2 under the heading “The Schedule”.

14. Whereas, Section 66 of the Copyright Ordinance, 1962 relates to offences and penalties of infringement of copyright or other rights conferred by the Ordinance. For ready reference, Section 66 of the Copyright Ordinance, 1962 is reproduced as under:

“66. Offences of infringement of copyright or other rights conferred by this Ordinance:--- Any person who knowingly infringes or abets the infringement of:

(a) The copyright in a work

- (ab) *The rental rights in cinematographic works and computer programmes;*
- (ac) *The rights of performers or producers or sound recording;*
or
- (b) *Any other right conferred by this Ordinance shall be punishable with [imprisonment which may extend to three (03) years, or with fine which may extend to one hundred thousand rupees] or with both.*

The juxtaposition which emerges out from the above discussion is that any person who is alleging infringement of copyrights should have to approach Intellectual Property Organization of Pakistan created under the Intellectual Property Organization of Pakistan Act, 2012 and as provided under Section 13(xix) of the Act *ibid* it is the power and function of the Intellectual Property Organization of Pakistan to initiate and conduct inquiries and proceedings related to offences in the prescribed manner. Whereas, Section 13(xx) of the Act *ibid* empowers the Intellectual Property Organization of Pakistan to refer matters and complaints relating to the offences under the laws specified in the Schedule to the concerned law enforcement agencies, whereas, in the Schedule of the Intellectual Property Organization of Pakistan Act, 2012 at Serial No.2, the Copyright Ordinance, 1962 (XXXIV of 1962) is mentioned. Under Section 66 of the Copyright Ordinance, 1962, offences and penalties of infringement of copyright have been mentioned.

15. The net result in light of the above analysis of law on the subject is that, appropriate forum against infringement of Intellectual Property Rights, is Intellectual Property Organization created under the Act of 2012 *ibid*, which is empowered to deal

with such like issues and as such none of the law enforcement agencies can initiate inquiry in any matter relating to infringement of copyrights unless the same is referred by the Intellectual Property Organization of Pakistan to any law enforcement agency.

16. While considering the entire background, this Court is of the view that learned Single Judge in Chambers has appreciated all legal aspects and appellant has failed to point out any legal defect or jurisdictional error in the impugned judgment, therefore, both the captioned ICAs are meritless and the same are hereby **DISMISSED**.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.

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