

APPEAL AGAINST DECREE OF INTELLECTUAL PROPERTY TRIBUNAL

The appeal was dismissed, and the impugned judgment and the decree of the Intellectual Property Tribunal, Lahore, declaring Messrs. DEPILEX (PVT). LTD., through Chief Executive, Ms. Masarrat Misbah (the Respondent) the lawful copyright owner of the name “Depilex” and permanently restraining Manzar Latif Mian (the Appellant) from using or passing off its business under that name was upheld.

The brief facts of the case are that the Appellant and Respondent entered into a partnership on 28.01.2002 under the name M&M Enterprises to operate salon businesses, including a men’s salon at 57-C/1, Gulberg-III, Lahore, and a women’s salon in Begumpura, Lahore. A dispute later arose over whether the trade name “Depilex” formed part of the partnership or belonged exclusively to the Respondent, with the Appellant asserting the name was to form part of the partnership while the Respondent maintained it continued to use the name independently. The relation deteriorated, culminating in a legal notice dated 04.07.2008 from the Respondent seeking dissolution of the partnership. Cross-litigation followed and the Appellant filed a suit for declaration, dissolution, and rendition of accounts, while the respondent filed a separate suit alleging copyright and trademark infringement. After a protracted procedural history spanning multiple appeals and a direction from the Supreme Court for expeditious disposal, the suit was ultimately decreed in the Respondent’s favor by the Intellectual Property Tribunal on 12.07.2016, prompting the present appeal.

Learned counsel for the Appellant submitted that the Presiding Officer erred in law and fact by failing to examine the validity of the Respondent’s copyright certificate and franchise license dated 04.02.2002, contending that the certificate was defective for want of the mandatory artist’s affidavit required under the Copyright Rules, 1967, and that the franchise license was an inadmissible, uncertified photocopy tendered without compliance with the Qanun-e-Shahadat Order, 1984, and without examining the alleged signatory. It was further argued that the Respondent’s claimed design dated back to 2004 while the Respondent company was incorporated in 1994, undermining its claim to use since 1980, and that the document appeared backdated relative to the design’s creation.

collaterally, and that copyright subsists in original artistic works independently of registration, which is evidentiary rather than a precondition to ownership.

The court held that the copyright in “Depilex” was registered in accordance with the statutory requirements under Section 39, 40 and 41 of the Copyright Ordinance, 1962, and that no cogent evidence had been produced to impeach the authenticity of the certificate or franchise license, nor had any rectification application been filed before the competent forum, so that the presumption of correctness attached under Section 42 stood unrebutted. On a review of Clause 3 of the Partnership Deed dated 28.01.2002, the Court found that the trade name “Depilex” was intended to be used under a valid franchise arrangement and not independently by either partner, reinforcing the Respondent’s lawful association with the brand. The Court further held that the Appellant’s continued use of the identical trade name after dissolution of the partnership, without any valid franchise rights or authorization, attracted the doctrine of passing off, amounting to a deliberate misrepresentation of association with the Respondent causing deception and injury to goodwill, and separately constituted infringement under Section 56 of the Copyright Ordinance, 1962, since copyright protection extends not only to literal reproduction but also to substantial or colorable imitation. Accordingly, the appeal was dismissed with no order as to costs.

