



**Article No. 02/2016**

**License Expired – Use of Trade Mark by Licensee deemed Infringement**

**Appellant: Malik Safdar Hussain**

**Respondents: Irfan Ahmad and another**

**Decision: Appeal Dismissed**

The respondent filed a suit for permanent injunction before District Judge, Gujrat, to restrain the plaintiff from manufacturing and selling electric fans under their registered trade mark “YOUNAS FAN” on the basis that the license agreement executed between the parties for the period of three years had expired and the appellant continued to illegally and unlawfully manufacture and sell electric fans under the said trade mark along with the appellant own trade marks “AL-KHAIR FANS and “AL-ARIF FANS” and thus causing confusion and deception in the market by misleading the consumers.

During arguments by the appellant’s counsel, it was admitted by him that the license agreement was entered between the parties for a period of three years but argued that the respondents having failed to meet certain obligations of the license agreement the matter was referred to an arbitrator with mutual consent of both the parties who issued an award of Rs. 40,065,268 along with some more adjustable amounts in favour of the appellant. He further stated that a partial payment of Rs.500,000 has been made by the respondent, as such, they are bound to follow the remaining stipulations of the award, *inter alia*, permit the appellant to manufacture fans till the final payment as awarded is not realized.

It was held that the lower court had correctly applied the relevant provisions of law as the fact that the trade mark was duly registered in favour of the respondents and the term of the license agreement to use the said mark had already expired it would *prima facie* give cause of action to the respondents and if the said mark is continued to be used by the appellant without any authority, this would violate their statutory exclusive right to use the trade mark themselves or to authorize others to do so on their behalf. It would tarnish the reputation and goodwill of the said trade mark, which will result in an irreparable loss to the respondents. It was further held that since the respondents had a *prima facie* case in their favour and were likely to suffer irreparable loss, the balance of convenience would tilt in their favour. As such, the impugned order does not suffer from any illegality or wrong exercise of jurisdiction. Consequently, the appeal being misconceived and devoid of any merit was dismissed *in limine*.

