

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.339 OF 2017**

Jawed Habibv Hari & Beauty Ltd	...Petitioners
<i>Versus</i>	
Sangeetas Hair & Beauty	...Respondent

Ms Pritam D Joshi, for the Petitioners.

**CORAM: G.S. PATEL, J
DATED: 4th May 2017**

PC:-

1. The Respondents, as franchisees of the Petitioner, were allowed to use during the subsistence of the parties' Franchise Agreement various trade marks such as Jawed Habib and JH, signage, logos and so on. The Franchise Agreement with the arbitration clause is dated 22nd December 2012. The Respondent was granted a limited license to operate a hair and beauty salon under the name of the Petitioner. The premises were in Kanpur. A copy of the Agreement is at Exhibit "B". Under the agreement, the Respondent was required to pay 15% of the total monthly sales revenue to the Petitioner as royalty. The Respondent was also required to report monthly sales. The Respondent was in default of providing the sales reports. It did not pay the agreed royalty payments.

2. The Agreement was valid from 20th January 2012 until 19th January 2021 subject to a renewal fee being paid every three years. The initial period of three years expired on 19th January 2015. The Respondent did not even pay the renewal fees.

3. Thus, the Respondents are in default. The Petitioner first sent a notice on 2nd November 2015 demanding the amount then due. There was no response. Ultimately an Advocate's notice followed on 12th January 2016 with a demand of Rs. 1,69,259/- and interest. The notice has actually been refused. In the meantime, the Respondent continuously unauthorisedly to use the Plaintiff's name, marks, logo and signage.

4. There is an Affidavit of Service. The Respondents are absent. In my view, a more than sufficient *prima facie* case is made out. The balance of convenience favours the Petitioners. Irreparable prejudice will be caused to the Petitioner if relief is not granted. The Arbitration clause is Clause 21 is at page 31. The place of arbitration is said to be Mumbai and courts in Mumbai have exclusive jurisdiction.

5. There will be an order in terms of prayer clause (b), which reads as follows:

"(b) pending the hearing and final disposal of the Petition the Respondent, their agents, servants and representative be restrained by an order of Injunction restraining them from using the trade name, trade mark, design and insignia (sign board) of the Petitioner and/or any other deceptively similar mark from the said outlet

premises namely 117K/87, Plot No. 68, Shobha Tower, Flat No. G-3, Kakadeo, Kanpur, U.P. 208 022 and/or any other premises;"

6. Liberty to the Petitioner to make an application under Section 17 for a deposit before the Arbitrator to be appointed. An application under prayer Clause (a) may be renewed before the learned Arbitrator. The Petitioner will invoke arbitration within a period of two months from today.

7. The Petition is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)