

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION (L.) NO.934 OF 2019

Jawed Habib Hair & Beauty Limited	..Petitioner
Vs.	
KC Corporation & Ors.	..Respondents

Mr.B.N. Poojari and Ms.Srishti Poojari i/b. Legal House for Petitioner.

CORAM : G.S. KULKARNI, J.

DATE : 28th AUGUST, 2019

P.C.:

Heard learned Counsel for the petitioner.

2. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the petitioner is seeking interim reliefs pending the arbitral proceedings. The case of the petitioner is that the petitioner has entered into a Franchisee Agreement dated 30 November 2015 with the respondents, which was executed at Mumbai. Copy of the Franchisee Agreement is annexed at Exhibit-C of the paper-book. Clause 24 is the arbitration agreement between the parties and in clause 25, the parties have agreed that the courts in Mumbai shall have exclusive jurisdiction.

3. The case of the petitioner is that the respondents were in default in making payment of the monthly fees and an amount of Rs.13,94,489/- was due and payable by the respondents. Despite repeated requests as made on the part of the petitioner to make payment of the outstanding dues, the respondents failed to make payment. Accordingly, the petitioner issued a termination notice dated 15 June 2019 to the respondents terminating the said franchisee agreement. In paragraph 21 (page 9 of the petition), the petitioner has averred that termination notice was received by respondent Nos.2 and 3. Under the Franchisee Agreement, the petitioner was using registered trademark of the petitioner.

4. In the above circumstances, the petitioner is before the Court praying for interim reliefs on the ground that despite termination the respondents continue to use the registered trademark of the petitioner.

5. Learned Counsel for the petitioner has tendered affidavit of service of Mr.Rahul Bendure dated 18 August 2019 stating that the respondents have refused to accept service of the petition alongwith the advocate notice. He has also produced for perusal of the Court the packet containing copy of the petition as received from the postal authorities with remark "refusal".

6. In the above circumstances, learned Counsel for the petitioner has prayed that the reliefs as prayed in the petition be granted pending the arbitral proceedings.

7. I have perused the averments made in the petition. The respondents are not interested to appear in the present proceedings as clear from the submissions as made by learned Counsel for the petitioner as also postal remarks and affidavit of service.

8. Having heard the learned counsel for the petitioner, I am of the opinion that prima-facie case has been made out by the petitioner. In view of the termination of the agreement, the balance of convenience is also in favour of the petitioner. It is thus in the interest of justice that interim relief of an injunction as prayed by the petitioner is granted. Accordingly, pending the arbitral proceedings, there shall be interim relief in terms of prayer clause (a) which reads thus:-

“(a) This Hon'ble Court be pleased to restrain the Respondents, agents, servants and representative thereof by a temporary order of injunction restraining from using the trade name “Jawed Habib Hair & Beauty” or any name incorporating trademark “Jawed Habib” or any similar mark including, design and insignia (on sign board) including at outlet premises at 1st Floor, Crystal Tower, Near Phagalwa Petrol Pumps, Opp. IDBI Bank, Station Road, Sikar, Rajasthan – 332001, and/or any other premises”

9. The petitioner shall commence the arbitral proceedings within a period of one month from today.
10. The petition is disposed of in the above terms. No costs.
11. The parties to act on an authenticated copy of this order.
12. The refused packet containing copy of the petition as returned by the postal department is handed over to learned Counsel for the petitioner to be preserved in case of any further requirement.

[G.S. KULKARNI, J.]