IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 08.08.2019	Delivered on 28.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Original Application Nos.551 & 552 of 2019
and Original Applications Nos.591 and 592 of 2019

OA No.551 of 2019

K.Selvakumar ... Applicant

Vs

G.Suthakar ... Respondent

OA No.552 of 2019

1. K.Selvakumar
2. S.Devaraj
3. K.Janani
4. Saraswathy ... Applicants

Vs

G.Suthakar ... Respondent

OA No.591 of 2019

G.Suthakar ... Applicant

Vs

K.Selvakumar ... Respondent

OA No.592 of 2019

G.Suthakar ... Applicant

Vs

1. K.Selvakumar
2. K.Janani
3. Devaraj
4. Saraswathy ... Respondents

Prayer in Appl. No.551/2019: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996, praying to an order of injunction restraining forbearing the respondent, his men, agents, representatives or anyone acting under him or on his behalf, from in any manner interfering with the conduct of the business by the applicant at "New Pattukottai Kamachi Mess" at Old No.3 New No.4 Dr.Singaravelu Street, T.Nagar, Chennai 600017.

Prayer in Appl. No.552/2019: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996, praying to an order of injunction restraining forbearing the respondent, his men, agents, representatives or any person acting under him or on his behalf, from in any manner interfering with the business and day to day operation of - "New Pattukottai Kamachi Mess – Nunpahal Unavagam LLP".

Prayer in Appl. No.591/2019: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 9 (11) e of the Arbitration and Conciliation Act, 1996, praying to grant an order of interim injunction restraining the respondent, his men, agents, or any other persons claiming under them from carrying on or commencing any business in the name and style of "New Pattukottai Kamachi Mess" and pass appropriate orders pending disposal of the Arbitration proceedings.

Prayer in Appl. No.592/2019: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 9 (11) e of the Arbitration and Conciliation Act, 1996, praying to grant an order of interim injunction restraining the respondents, their men, agents, or any other persons claiming under them from carrying on or commencing any business in the name and style of "New Pattukottai Kamachi Mess – Nunpahal Unavagam LLP" and pass appropriate orders pending disposal of the Arbitration proceedings.

For Applicant Applicant in OA.551 & 552/2019 & Respondent in OA.591 & 592/2019	: Mr.C.Manishankar, SC for M/s.N.Kavitha Rameshwar
For Respondent Respondent in OA.551 & 552/2019 & Applicant in OA.591 & 592/2019	: Mrs.Chitra Sampath, SC for M/s.T.S.Baskaran

COMMON ORDER

These applications stem out of a partnership agreement dated 14.10.2017 and a Limited Liability Partnership Agreement (LLP Agreement) dated 28.09.2018 entered into between the first applicant in OA Nos.551 and 552 of 2019 and the respondent therein. By a supplementary LLP Agreement dated 12.10.2018, the applicants 2, 3 and 4 in OA No.552 of 2019 were added as partners in the Limited Liability Partnership Firm. While OA Nos.551 and 552 of 2019 had been filed by the applicants seeking aforesaid relief of injunction, OA Nos.591 and 592 of 2019 have been filed by the respondent in OA Nos.551 and 552 of 2019 seeking injunction. All these applications have been filed under Section 9 of the Arbitration and Conciliation Act.

2. The brief facts that led to the dispute are as follows:

On 14.10.2017, a Partnership Deed was entered into between the first applicant in OA Nos.551 and 552 of 2019 and the sole respondent therein constituting a partnership business in the name of "New Pattukottai Kamachi Mess" with an object of setting up a chain of restaurants and eating houses. The Principal place of business is at New No.4, Dr.Singaravelu Street, T.Nagar, Chennai 600 017. As per the said partnership agreement, the capital of Rs.20,00,000/- was agreed to be provided by the first applicant in OA Nos.551 and 552 of 2019. The sole respondent was designated as a working partner and it was agreed between the partners that future capital requirements shall be brought in by the party of the first part therein, namely, the first applicant in OA Nos.551 and 552 of 2019. The other finances required for the partnership firm from time to time is agreed to be contributed by the parties in equal proportion or in the manner as may be mutually agreed upon by the partners. It was also provided that partners will be entitled to interest at the rate of 12% per annum or at such rates, as may be prescribed under Section 40 (b) of the Income Tax 1961.

3. The respondent was required to be incharge of the recipe and cooking at the restaurants. The said deed also provided for a minimum of 3 months' notice by a partner who desires to retire from the Partnership firm. The Partnership was at Will. The good will of the retiring or deceased partner or partners shall be decided by mutual consent of other partner/s the Deed also contained an Arbitration Clause.

4. Subsequently on 28.09.2018, the first applicant in OA Nos.551 and 552 of 2019 and the respondent therein, entered into a Limited Liability Partnership Agreement. The object of the agreement is to set up restaurant in the name of "New Pattukottai Kamatchi Mess – Nunpahal Unvavagam LLP". The capital of the LLP was fixed at Rs.30,00,000/-. The

party of the first partner namely, the first applicant in OA Nos.551 and 552 of 2019 contributed a sum of Rs.29,99,000/- towards capital and the party of the second part, namely, the respondent in the said applications had contributed Rs.1,000/-. Inasmuch as, the party of the second part, namely, the respondent in OA Nos.551 and 552 of 2019 was having cooking skills, long experience and had developed recipe and other support services in running of Noon time restaurant, it was agreed between the parties that the Name, Logo, Trademark of the Restaurant, Combination of recipe were not to be used by other partners and any additional branch was agreed to be opened only with the written consent of the party of the second part, namely, the respondent in OA Nos.551 and 552 of 2019. The profit and loss were to be shared as follows:

The first partner namely, the first applicant in OA Nos.551 and 552 of 2019 is entitled to 70% of the profit and the second partner, namely, the respondent in OA Nos.551 and 552 of 2019 is entitled to 30% of the profit. The LLP also was at liberty to take new partners. The duration of LLP was agreed to be for a period of three years.

5. Pursuant to the said Agreement dated 28.09.2018 a Supplemental Agreement was entered into, wherein, the applicants 2, 3 and 4 in OA No.552 of 2019 were included as partners. The 70% share of profits of the first applicant was agreed to be distributed between the new partners and the first applicant in the following ratio:

First applicant	: 15%
Second and third applicant	: 25% each
Fourth applicant	: 5%

the newly added partners had also contributed monies towards capital which is as follows:

The second and third applicants namely, S.Devaraj and K.Janani have contributed Rs.25,00,000/- each, while the fourth applicant Saraswathy had contributed Rs.5,00,000/- and the first applicant K.Selvakumar had contributed Rs.14,99,000/-.

6. The document constituting the Limited Liability Partnership dated 28.09.2018 contains a clause relating to expulsion of partners as well as termination of the LLP. An Arbitration Clause was also included in order to

resolve the disputes between the partners in the said LLP. The LLP also applied for Registration of Trademark under Section 23 (2) of the Trade Marks Act, on 16.11.2018 the Trade Marks sought to be registered was the name "New Pattukottai Kamatchi Mess – Nunpahal Unvavagam LLP". It is also claimed on 20.02.2019, the respondent in OA Nos.551 and 552 of 2019 had applied for the registration of trade mark in the name of "New Pattukottai Kamatchi Mess", as a sole proprietor suppressing the existing partnership and the application made on behalf of the Limited Liability Partnership.

7. On 24.04.2019, the respondent had issued a legal notice to the applicants seeking books of accounts in respect of the restaurants run by the Limited Liability Partnership at Velacherry and Anna Nagar. The notice was issued on the allegation that these businesses are being carried on using the registered trademark, without providing proper accounts. Upon the receipt of the notice, the first applicant had sent a notice dated 29.04.2019 calling for the meeting of the partners on 04.05.2019, a reply notice was also issued on 30.04.2019 stating that accounts are maintained

at the principal place of business and it is open to the respondent to inspect the same at any time. It was also claimed in the said notice that the venture was not making profits as on that date, there has been a loss of Rs.15,00,000/-. Upon receipt of the said reply, the respondent sent a rejoinder through his counsel on 06.05.2019, offering to dissolve the limited liability partnership with the immediate effect, purportedly invoking Clause 32 of the LLP Agreement.

8. It is also stated that the father of the respondent died on 26.04.2019 and hence he would not be able to attend the meeting of the partners of the LLP which has been called on 04.05.2019. It is also seen from the records that a letter dated 03.05.2019 was sent to the applicants requiring them to postpone the meeting of the partners. On receipt of the rejoinder dated 06.05.2019, the first applicant issued a show cause notice for expulsion of the respondent from the LLP. The said notice required the respondent to show cause, as to why, he should not be removed as a partner of the LLP within 60 days from the date of receipt of the said notice. The said notice calling for explanation was served on the

respondent on 03.05.2019. The proposed meeting of the partners dated 04.05.2019 was adjourned to 09.05.2019 and on 09.05.2019 a notice was issued to the partners calling for the meeting at 4.00 p.m. at the place of business at Anna Nagar. The respondent, however, did not attend the said meeting. In the said meeting the other partners decided to issue a show cause notice to the respondent seeking his explanation, as to why, he should not be removed as a partner of the limited liability partnership.

9. The second applicant Mr.Devaraj, was also appointed as a designated partner. The other applicants also took part in the said meeting. In the interregnum the first applicant issued a notice for dissolving the partnership, namely, the partnership entered into on 14.10.2017 between him and the respondent. The dissolution notice seems to have been ignited by the fact that a police complaint was lodged, by a worker, at the instance of the respondent complaining that he was not allowed to enter the place of business by the first applicant on 06.05.2019. In this backdrop the above applications have been filed with various prayers for injunction under Section 9 of the Arbitration and Conciliation Act, 1996.

10. According to the applicants in OA Nos.551 and 552 of 2019, the partnership dated 14.10.2017 which is a partnership at Will stands dissolved with the effect from 07.05.2019, upon the issuance of the notice of dissolution by one of the partners. Therefore, an injunction is sought for restraining the respondent from interfering with the business that is being carried on at New No.4, Dr.Singaravelu Street, T.Nagar, Chennai 600 017, pending adjudication of the disputes in the Arbitration proceedings.

11. In OA No.552 of 2019 also the applicants who are the partners of the Limited Liability Partnership firm seek an injunction restraining the respondent from interfering with the conduct of the business and day-to-day operation of LLP, namely, "New Pattukottai Kamatchi Mess – Nunpahal Unvavagam LLP". As regards the claim in OA No.552 of 2019 is concerned the same is based on the notice issued by the respondent on 06.05.2019 seeking to dissolve the LLP with immediate effect. It is also claimed that a unanimous decision had been arrived at in the meeting of the partners on 09.05.2019 to expel the respondent from the partnership in

accordance with Clause 24 of the LLP Agreement. It is also contended that the respondent has started acting against the interest of the business.

12. The applicants would claim that the very fact that the respondent has issued a notice dated 06.05.2019 seeking to dissolve the LLP would show that he is not interested in carrying on business in partnership with them.

13. The applications in OA Nos.591 and 592 of 2019 have been filed by the sole respondent in Original Applications in OA Nos.551 and 552 of 2019 seeking an order of injunction restraining the respondent therein, namely, the first applicant in OA Nos.551 & 552 of 2019 from carrying on or commencing any business in the name and style of "New Pattukottai Kamatchi Mess". The prayer in OA No.592 of 2019 is for an injunction restraining the respondents therein namely, the partners of the LLP from carrying on or commencing any business in the name and style of "New Pattukottai Kamatchi Mess – Nunpahal Unvavagam LLP" pending disposal of the Arbitration proceedings.

14. The applicant would claim reliefs on the ground that it was he and his mother who had the recipe for the cooking and it was they who started the "New Pattukottai Kamatchi Mess – Nunpahal Unvavagam" at Kumbakonam even in the year 2016. According to him, the success of the business is only due to the homely food that was served at the restaurants. The recipe were developed by the applicant and his mother due to their long experience in food industry. He would also claim that as per Clause 10 of the LLP agreement, the Trademark, the Logo and the Name of the restaurant would belong to him and the other partners shall not use it for any other business and any other new branch shall not be opened without previous written consent of the applicant in OA Nos.591 and 592 of 2019.

15. The claim for injunction made by the applicants in OA Nos.551 and 552 is resisted by the respondent therein mainly contending that though the applicants were the finance partners, the respondent alone was working partner, who had knowledge of the recipe and the cooking style,

and it was only because of the recipe and the taste, the restaurants developed huge business. According to him, it is only in recognistion of the knowledge of the respondent he was taken as a equal partner in the partnership business without capital and as a partner with 30% share in the profits in the LLP with a capital of only 1000/-rupees. Heavily relying upon Clause 10 of the LLP agreement, the respondent/applicant in OA Nos.591 and 592 of 2019 would contend that the very notice requiring to him to show cause against the termination/expulsion is invalid. As regards the partnership firm, it is the contention of the applicant in OA No.591 of 2019 that the dissolution itself is not valid as the same has been done only with a view to threaten him and to dance to the tunes of the first applicant in OA Nos.551 and 552 of 2019.

16. I have heard Mr. C.Manishankar, learned Senior Counsel assisted by Mrs.N.Kavitha Rameshwar for the applicants in OA Nos.551 and 552 of 2019 and the respondents in OA Nos.591 and 592 of 2019 and Mrs.Chitra Sampath, learned Senior Counsel assisted by Mr.T.S.Baskaran, for the respondent in OA Nos.551 and 552 of 2019 and the applicant in OA

Nos.591 and 592 of 2019.

17. I shall first take up the applications relating to the partnership agreement dated 14.10.2017.

18. Mr.C.Manishankar, learned Senior Counsel appearing for the applicant in OA Nos.551 and 552 of 2019 would contend that as regards the partnership constituted under the Partnership Deed dated 14.10.2017, the same being a partnership at Will stood dissolved with effect from 07.05.2019, namely, the date of notice of dissolution. Therefore the application for injunction in OA No.591 of 2019, according to him, is not maintainable, he would further contend at best the applicant can seek accounts till the date of dissolution.

19. Countering the said submission, Mrs.Chitra Sampath, learned Senior Counsel appearing for the respondent would submit that the dissolution itself is not valid. She would also point out that the Lease Deed entered into with the landlord of the premises at New No.4, Dr.Singaravelu

Street, T.Nagar, Chennai 600 017, has been entered into by the applicant and the respondent together and therefore, he has got a 50% right in the said lease. She would also further contend that the trademark namely, the "New Pattukottai Kamatchi Mess" belongs to him and hence he cannot be ousted from the business by the respondent by issuing the dissolution notice. She would also point out that under Clause 13 of the Partnership Deed, three months notice is required for any partner to retire from the partnership. Therefore, according to learned Senior Counsel, the notice of dissolution dated 07.05.2019 is itself invalid and the same will not confer any right on the applicant in OA No.551 of 2019 to exclude the respondent from the business. She would also contend that the goodwill of the business has to be shared by the partners and the same shall be decided by mutual consent of the partners. Therefore, according to Mrs.Chitra Sampath, learned Senior Counsel the injunction sought for in OA Nos.551 of 2019 cannot be granted.

20. I have considered the rival submissions.

21. It is not in dispute that the Lease Deed was entered into on 20.09.2017. By both the applicant as well as the respondent and it was followed by partnership agreement between them on 14.10.2017. As could be seen from the documents, one of the workers had lodged a police complaint on 06.05.2019, complaining that he has not been allowed to work. It is this complaint which has triggered the dissolution notice. Of course the fact that the respondent had applied for registration of a trade mark in the name of new “New Pattukottai Kamatchi Mess” as a sole proprietor is also shown as a reason for the dissolution of the partnership. A perusal of the partnership deed would show that the partnership is one at Will. Therefore, the same can be dissolved by issuance of notice. The question whether three months' notice is to be issued for dissolution of the Partnership, or not will have to be decided only in the Arbitration proceedings.

22. Clause 15 of the partnership Deed provides that in the event of the dissolution of the firm asserts of the partnership can be divided among the partners in the ratio of the amounts standing in the capital amount. The

lease is undoubtedly the asset of the partnership which shall be subject matter of the distribution upon termination of the Arbitration proceedings between the parties. However, the interest of the respondent in OA Nos.551 of 2019 (applicant in OA No.591 of 2019) will have to be protected pending disposal of the Arbitration proceedings.

23. Grant of an injunction restraining the running of the business would not be to the advantage of either of the partners. Running business should not be scuttled because of the disputes between the partners. I am therefore of the considered opinion that the Original Application No.551 of 2019 and 591 of 2019 could be disposed of with a direction to the applicant in the Original Application No.551 of 2019 to maintain proper accounts regarding the business that is carried at New No.4, Dr.Singaravelu Street, T.Nagar, Chennai 600 017, in the name and style of “New Pattukottai Kamatchi Mess” till the disposal of the Arbitration proceedings. The rights of the parties could be finally determined in the Arbitration proceedings. I, therefore, see no ground for grant of an order of injunction as prayed for by the applicant in OA No.591 of 2019, wherein, he seeks to restrain the

respondent from carrying on or commencing business in the name and style of "New Pattukottai Kamatchi Mess". While I make it clear that there will be no injunction restraining the respondent for carrying on the business at New No.4, Dr.Singaravelu Street, T.Nagar, Chennai 600 017, he shall not commence any new business or open a new branch with the same name i.e. "New Pattukottai Kamatchi Mess" pending the Arbitration proceedings.

24. The Original Application in OA Nos.551 of 2019 and 591 of 2019 are disposed of with the above directions.

25. Adverting to the other two other applications namely, OA Nos.552 and 592 of 2019, the fact that the LLP Agreement was entered into on 28.09.2018 is not in dispute. The Supplemental Agreement dated 12.10.2018 is also admitted. In response to the notice dated 24.04.2019, the respondents in OA No.592 of 2019/applicants in OA No.552 of 2019 have claimed that the business has suffered a loss of Rs.15,00,000/- as on the said date. Upon receipt of the said reply the applicant in OA

No.592/2019 the respondent in OA No.552 of 2019 had issued a notice calling for dissolution of the firm.

26. It is the contention of Mr.C.Manishankar, learned Senior Counsel appearing for the applicants in OA No.552 of 2019 that the said notice purportedly invoking Clause 32 of the LLP agreement is invalid as none of the exigencies contemplated under Clause 32 had occurred. The Clause 32 of the LLP agreement reads as follows:

> "***32. Termination & Dissolution*** – *If any time owing to losses or any other cause whatsoever the entire capital of the LLP shall have been lost or not represented by available assets or there exists reasonable cause of apprehension that a call on the partners to contribute further capital of 100% or more of the entire capital of the LLP is imminent in order to carry on its business as a solvent entity, the Partners may require the LLP to be dissolved and wound up as if the same has*

occurred by efflux of time.”

A reading of Clause 32 would show that a termination or dissolution of the LLP can happen only when any of the exigencies set out in Clause 32 had occurred. Clause 32 requires a situation where the entire capital of the LLP has been lost or there is a reasonable apprehension that the partners may be called upon to contribute further capital of 100% or more of the entire capital of LLP or by efflux of time.

27. Even as per the records, none of the exigencies had occurred. All that it is stated in the reply notice dated 30.04.2019 is that partnership had incurred a loss of Rs.15,00,000/- as on that date. A capital of the LLP after the supplemental deed is about Rs.70,00,000/-. Therefore, there is no question of the entire capital being wiped out or the partners being called upon to contribute more than 100% of their capital. Hence the notice demanding dissolution of the LLP, in my considered opinion, at least prima facie is not in compliance with Clause 32.

28. Mrs.Chitra Sampath, learned Senior Counsel appearing for the applicant in Application No.592 of 2019 would strenuously contend that the attempt made by the other partners to expel the applicant therein is also not in accordance with the provisions of the LLP agreement dated 28.09.2018 or the supplemental agreement dated 12.10.2018. Applicants in OA No.552 of 2019 have invoked Clause 24 of the LLP documents to call upon the respondent therein to show cause, as to why, he should not be expelled Clause 24 reads as follows:

> ***24. Expulsion of Partner***: *This provision of this Agreement shall operate as an express agreement of the partner: a partner may be expelled* ***other than the partners being the original parties hereto*** *by a unanimous decision of the partners save in good faith and in the interest of the partnership business only after a show-cause notice in writing is served on that partner or designated partner giving 60 days time for his response; and in that event the Partner*

> *expelled shall be entitled to the benefits of a retiring partner in accordance with the provisions of this Agreement in that behalf*.

A reading of the above clause would show that the original parties to the LLP, namely, the first applicant and the respondent in OA No.552 of 2019 cannot be expelled. The respondent in OA No.552 of 2019 is an original party to the LLP agreement dated 28.09.2018. Therefore, Clause 24 does not authorise the other partners to expel the original partner. In view of the above, it is clear that the attempt made by the applicants in Original Application No.552 of 2019 to expel the respondent from the Limited Liability Partnership is illegal and unauthorised.

29. Relying upon Clause 10 of the said LLP agreement, Mrs.Chitra Sampath would strenuously contend that the Name, Logo, Trademark of the restaurant and combination of the recipe cannot be used by the other partners and no additional branch could be opened without the written prior concurrence of the applicant in OA No.592 of 2019. According to her, in

view of Clause 10, she would be entitled to an injunction as prayed for in OA No.592 of 2019.

30. Countering the said submission Mr.C.Manishankar, learned Senior Counsel appearing for the applicants in OA Nos.552 of 2019 and the respondents in OA No.592 of 2019 would submit that no doubt Clause 10 provides that no new place of business can be opened without a written consent of the partner, the same would pale into insignificance in view of the fact that the applicant and the respondent have made an application for registration of the trademark of the LLP on 16.11.2018 and once the trademark is registered in the name of LLP, the applicant in Application No.592 of 2019 would lose the exclusive right to the Trade Mark. He would also draw my attention to Section 28 of the Trade Marks Act to contend that once a joint application is made for registration of a Trade Mark, the exclusive right would be lost.

31. Mr.C.Manishankar, learned Senior Counsel appearing for the applicants would also draw my attention to the judgment of the Division

Bench of this Court in ***V.S.Ramappa v. D.Manoappa and another*** *reported in* ***69 LW 739***. The said judgment arose out of an application for expunging the Trade Mark. While deciding the question, as to whether, a Trade Mark could be expunged due to fraud and misrepresentation committed in obtaining it, the Division Bench concluded that the Single Judge had no power to direct joint registration of a Trade Mark. The Division Bench held that Section 10(2) would be confined to a concurrent user who is honest and not a fraudulent user. I do not think that the said judgment could help in the interpretation of Clause 10 of the LLP agreement dated 28.09.2018 and the supplemental agreement dated 12.10.2018 which would apply to the facts of this case.

32. Mr.Manishankar, learned Senior Counsel would also draw my attention to the judgment of the Hon'ble Supreme Court in ***Addanki Narayanappa and another v. Bhaskara Krishtappa and 13 others,*** reported in ***AIR 1966 SC 1300***, to contend that once property or money is brought in to the firm whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the

partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought in the property would not be able to claim or exercise any exclusive right over the property that he had brought him. Relying upon the above said observations of the Hon'ble Supreme Court, Mr.Manishankar, learned Senior Counsel would contend that once the LLP is formed and the LLP had registered the Trade Mark, it would not be open to the respondent in Application No.552 of 2019 to seek to restrain the LLP from utilising the same trade name and opening other businesses or continuing the same business.

33. No doubt the Hon'ble Supreme Court had held that once the property is brought into a partnership, it would become the property of the partnership. But in the case on hand, there is contract to the contrary between the parties. Clause 10 of the LLP document clearly states that the Name, Logo, Trademark of the restaurant, Combination of the recipe cannot be used by other partners and any additional branch other than the proposed two Branches cannot be opened without the prior written

concurrence of the applicant in OA No.591 of 2019.

34. Of course the Trade Mark would become the property of the LLP, but a right is given, under the agreement between the parties, to the applicant in OA No.592 of 2019 to restrain the other partners from using the name, logo, trademark of the restaurant and combination of the recipe and also to restrain the LLP as well as the other partners for opening any additional branch without his written permission. I do not think such a contract is invalid or precluded under law. Once it is agreed between the parties that the Trade Mark or the Logo should be used by the LLP subject to certain restrictions, the same will prevail. Mr.Manishankar, learned Senior Counsel would however, submit that none of the partners or the LLP would open any other branch or any new branch, till the disposal of the Arbitration proceedings.

35. In view of the said statement made by the learned Senior Counsel across the bar, it is unnecessary for me to go into the question, as to whether, the other partners could do business using the Name, Logo,

Trademark of the restaurant, combination of the recipe or whether the LLP would be entitled to start a new branch with the same name. The statement of the learned Senior Counsel to the effect that neither the partners nor the LLP would start any new branch or any new business with the Name, Logo, Trade mark of the restaurant, combination of the recipe till the disposal of the Arbitration proceedings is recorded.

36. The other question that remains to be decided is as to whether, the applicant in OA No.592 of 2019 would be entitled to prevent the other partners were carrying on business in two existing branches of the LLP in the name and style of "New Pattukottai Kamatchi Mess – Nunpahal Unvavagam LLP". I have already held that the notice in dissolution issued by the applicant in OA No.592 of 2019 seeking to dissolve of LLP *prima facie* appears to be invalid. I have also concluded that the attempt made by the respondents to expel the applicant in OA No.592 of 2019 from the LLP is also against the contract entered into between the parties.

37. In the light of the said conclusions it is held that the applicant in

OA No.592 of 2019 continues to be a partner in the LLP. As regards the argument regarding absence of notice for the meeting of the partners that was held on 09.05.2019, I am not going into the said contentions, inasmuch as, I have held that the existing partners of the LLP have no right to remove the original partner namely, the first applicant in OA No.552 of 2019 and the respondent therein, invoking Clause 24 of the LLP Agreement. In the light of the conclusions reached above, the respondent in OA No.552 of 2019 would continue as a partner of the LLP.

38. It will be pertinent to point out Clause 30 of the LLP agreement which prohibits partners from breaking away except under mutual agreement after giving advance notice of two months in writing. In view of the said Clause, I am of the considered opinion that the applicants in OA No.552 of 2019 would not be entitled to start a new business or a new branch using the Name, Logo, Trademark of the restaurant, Combination of the recipe, pending disposal of the Arbitration proceedings. At the same time, the applicant in Application No.592 of 2019 cannot prevent the respondents therein from continuing the business which is now being

carried on in the name of the LLP, subject of course to the respondents in Application No. 592 of 2019 maintaining true and proper accounts for the business that are being carried on Application Nos. 552 of 2019 and 592 of 2019 are disposed of as follows:

> *There will be an injunction, restraining the respondents in Application No.592 of 2019 from starting any other branch or similar business using the Name, Logo, Trade Mark of the Restaurant, Combination of the recipe, pending disposal of the Arbitration proceedings. They are also directed to maintain true and proper accounts for the businesses that are now being carried out. Since I have concluded that the applicant in OA No.592 of 2019 continues to be a partner of the LLP, he would be entitled to*

periodical inspection of the accounts. He shall, however, not interfere with the day-to-day running of the business till the disposal of the Arbitration Proceedings.

28.08.2019

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order
jv

R.SUBRAMANIAN,J.

jv

Pre Delivery Order
Original Application Nos.551 & 552 of 2019
and Original Applications Nos.591 and 592 of 2019

28.08.2019