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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 164/2018 & CM APPL. 5207/2018
M/S MANCHANDA BROTHERS Petitioner
Through Mr. Akhil Mittal and Mr. Vineet
Mishra, Advocates

versus

M/S MANCHANDA FOODS Respondent
Through Mr. Vijay K. Sehgal, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **15.02.2019**

Vide the present petition, the petitioner has assailed the impugned order dated 24.1.2018 passed by the learned ADJ-01, Central, Tis Hazari Courts, Delhi in TM No.91/2017 vide which the parties on the application of the respondent were referred to arbitration under a stated arbitration clause in the partnership deed of the petitioner i.e. plaintiff of the suit between the parties and the suit was thus disposed of and it was held that the plaintiff i.e. the petitioner to the present petition was free to seek interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, as per law.

The present petitioner herein is arrayed as M/s. Manchanda Brothers through its partner Sh. Varun Manchanda. The respondent, in the case is M/s Manchanda Foods through its sole proprietor qua which it has been submitted on behalf of the petitioner herein that the sole proprietor of Manchanda Foods is Sh. Pardeep Manchanda.

It has been submitted on behalf of the respondent that the name of Mr. Pardeep Manchanda is deliberately not mentioned in the memo of parties concealing the fact that Mr. Pardeep Manchanda is a partner of the petitioner i.e. M/s Manchanda Brothers. The partnership deed dated 1.9.2007 relied upon on behalf of the respondent was executed between Sh. Harish Manchanda, Sh. Gulshan Manchanda, Sh. Pardeep Manchanda, Sh. Varun Manchanda and Sh. Rahul Manchanda and it is contended on behalf of the respondent that the clause 18 of the said partnership deed dated 1.9.2007 reads to the effect:

“18. That any dispute arising out of this partnership or as to interpretation, operation or enforcement of term of this partnership between the parties or their legal representatives shall be referred for adjudication to the arbitrator appointed by all the parties, whose decision shall be final and binding on all the parties and their legal representatives. No party will be allowed to go in the Court of Law.”

The partner of M/s. Manchanda Brothers through whom the present petition had been filed is arrayed as Partner No. 4. As per the said Partnership Deed Sh. Pardeep Manchanda, the proprietor of M/s. Manchanda Food is arrayed as Partner No.3 in the said Partnership Deed dated 01.09.2007.

In terms of the Arbitration Clause, 18 referred to herein above, it has been stated that the dispute arising out of “....*this partnership or as to interpretation, operation or enforcement of term of **this** partnership between the parties...*” entered into qua Partnership

Deed dated

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01.09.2007, which partnership was related to the business to be carried out under the name and style of M/s. MANCHANDA BROTHERS and that its partners were to work jointly in partnership for carrying on the business of Hing, Hawan Samgri, Dhoop, Kirayana, Masalas or any kind of other related goods and any dispute qua the enforcement of the terms of that partnership between the parties and their legal representatives would be referred for adjudication to the arbitrator appointed by all the parties, whose decision shall be final and binding on all the parties and their legal representatives.

It has been submitted vide the present petition that the suit filed by the present petitioner was under Section 134 & 135 of Trade Marks Act, 1999 and Section 55 of the Copyright Act, 1957 for permanent injunction restraining infringement, passing off; delivery up; rendition of accounts, and damages etc. was filed against M/s. Manchanda Foods, in view of the respondent allegedly infringing the trademark "TITLI HING" of the present petitioner by using the word MANCHANDA TITLI HING in relation to the same product marketed by M/s. Manchanda Foods fraudulently.

Counsel for the petitioner further submitted that the trademark of the petition M/s. Manchanda Brothers is *fssai* Lic. No. 1001406400034 and the trademark of the respondent M/s. Manchanda Foods is *fssai* Lic. No. 1081602000091.

In response to a specific Court query, learned counsel for the

respondent has responded to the effect that the respondent is separately

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assessed do income tax.

The petitioner and the respondent are admittedly separate entities and clause 18 of the Partnership Deed dated 01.09.2007 executed between the partners of M/s. Manchanda Brothers, relates only to the partnership and the transactions and disputes between the partners qua enforcement of the terms of the Partnership Deed dated 01.09.2007 placed as Annexure P-7 of the present petition and to no other entity.

In view thereof the referral of the proceedings of the TM No. 91/2017 in terms of order dated 24.01.2018 i.e. the impugned order of the Court of learned ADJ-01, Central is apparently erroneous and the said order to that extent is set aside. Taking the same into account, the parties are directed to appear before the District Judge (HQ) for allocation of the suit i.e. TM No.91/2017 for further proceedings in accordance of law on 05.03.2019 at 2:30 PM.

Counsel for respondent submits that arbitral proceedings have already been invoked by the respondent as partner of M/s Manchanda Brothers qua other four partners of M/s Manchanda Brothers under Section 9 of the Arbitration and Conciliation Act.

Counsel for respondent has submitted on record copy of an application u/S 9 of the Arbitration and Conciliation Act 1996 titled as **Sh. Pardeep Manchanda, partner of the Manchanda Foods**

**Vs. Sh. Harish Kumar Manchanda & Ors., partners of the
Manchanda Brothers** dated 11.02.2019 filed in the Court of the ADJ
(Central)-01, Tis Hazari, Court in

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relation to TM No. 37/2019, copy of which has been supplied to
counsel for the petitioner.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

FEBRUARY 15, 2019
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