*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   **Date of decision: 7th March, 2018**

+   **CS(COMM) 297/2016, IA Nos. 4214/2018 (u/O IX R-7 CPC), 4215/2018 (for condonation of 428 days delay in filing IA No.4214/2018), 4216/2018(for condonation of 62 days delay in re-filing IA No.4214/2018), 4448/2018(u/O.VIII R.1 CPC)**

GMA FIRST INDIA (P) LTD INDIA ..... **Plaintiff**

Through: Mr. Vaibhav Arora, Adv.

Versus

GENIUS MIND CONSULTANCY SDN BHD & ORS.. Defendants

Through: Mr. Deepak Agarwal, Mr. S.Santanam Swaminadhan & Mr. Kartik Malhotra, Advs. for D-1 & 2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 22nd February, 2019, the following order was passed:-

"1. The plaintiff instituted the present suit (i) to restrain the defendants No.1&2 from publishing defamatory information relating to the plaintiff on their website and from entering into direct agreements or arrangements with defendant No.3 or any franchisee / sub-franchisee of the plaintiff; (ii) for declaration that the termination dated 27th November, 2015 by the defendants No.1&2 of the Franchise Agreement dated 1st April, 2015 was null and void; (iii) for recovery of damages in the sum of Rs.2 crores; and, (iv) for rendition of accounts.

2. The suit came up first before this Court on 1st April, 2016, when holding that the case of the plaintiff at best was that his Franchise Agreement had been illegally terminated by the defendants No.1&2; also finding that there was no defamatory material which was contained in the public notice issued by the defendants on their website; and, holding that the Franchise

Agreement was not specifically enforceable, the suit insofar as for permanent injunction and for declaration of the termination as bad was dismissed at the threshold and summons of the suit issued only qua the relief claimed in the plaint of damages and rendition of accounts.

3. A number of applications filed by the defendant No.1 for setting aside of the order proceeding ex-parte against the defendant No.1 and for condonation of delay in filing written statement are pending consideration.

4. The counsel for the plaintiff, on enquiry as to the claim of the plaintiff for compensation and rendition of accounts in the suit, states that the defendant No.1 under the agreement with the plaintiff was not entitled to deal with any of the sub-franchisees of the plaintiff prior to the termination of the Franchise Agreement with the plaintiff but has dealt with the sub-franchisee of the plaintiff.

5. Even if that be so, I fail to see as to what could be the claim of the plaintiff for damages on that ground.

6. A perusal of the plaint shows the plaintiff to have pleaded absolutely no particulars of the damages, if any suffered by the plaintiff and for which only the claim in this suit survives. Rather, it is found from the pleadings that the plaintiff itself was suffering under the franchise agreement and was unable to answer queries of his customers about the scientific proof of the techniques, to impart which the defendants No.1&2 appointed the plaintiff as a franchisee. If the plaintiff was unable to earn under the franchise agreement, the question of it suffering any loss from termination thereof does not arise.

7. The counsel for the plaintiff, on enquiry explains that the defendants No.1&2 had appointed the plaintiff as their master franchisee to render mid-brain activation to the children between *the ages 5 to 15 years by enclosing the said children in a room and subjecting them to certain sound waves and other activities.*

8. Neither the counsel for the plaintiff nor the counsel for the defendants No.1&2 is able to explain the basis of the aforesaid.

9. The plaintiff, in the plaint has further pleaded that he had been paying and was ready and willing to pay the royalty agreed under the agreement.

10. It prima facie appears that the suit was primarily aimed at getting injunction against termination of the agreement and since to bring the suit within the pecuniary jurisdiction of this Court, the valuation thereof had to be above Rs.2 crores, in addition to permanent injunction, the claim for damages was also made, though without any pleading and basis.

11. A claim for damages has to be substantiated by particulars thereof and the plaint is completely bereft of any particulars or of the loss suffered. Reference in this regard can be made to ***Kailash Nath Associate vs. Delhi Development Authority*** *(2015) 4 SCC 136 and* ***Draupadi Devi vs. Union of India*** *(2004) 11 SCC 425.*

12. It is deemed appropriate to give an opportunity to the counsel for the plaintiff to prepare on the said aspects so that he makes his submissions, without wasting any time of the Court.

13. List on 7th March, 2019."

2. Today, the counsel for the plaintiff states that defendant no.2 had given an undertaking dated 27th September, 2015 to the plaintiff, *inter alia* as under:-

"Solatium

In case I am unable to develop at-least 4 (SSR, SBT, SSA, MMA) courses with complete training manual (SOP) WITH 100% RESULT within next 2 months, I shall not claim any royalty and also compensate GMA First India Private Limited along with its Master Fanchisees REGION AND STATES AND CITIES with a consolidated amount of 20,000 US $ and further @ 5000 US $ per month till the courses are fully launched. It is made clear that all the parties have unanimously agreed that this is a mutual and curable defect, no dispute persists."

3. It is argued that the defendant no.2 Dr. David Ting @ Ting Chin Siong is in breach of this undertaking and the plaintiff is entitled to recover thereunder from the defendant no.2.

4. However, the claim in the suit is admittedly not on the said basis and the counsel for the plaintiff is unable to show any claim having been made on the said basis.

5. On the contrary, as recorded in the order of 22nd February, 2019 reproduced above, the plaintiff was choosing to continue as a franchisee of the defendant no.1 and seeking restraint against defendant no.1 appointing any other franchisee and claiming damages, and which claim is contrary to the argument now raised of the plaintiff being entitled to recover under the undertaking.

6. The counsel for the plaintiff states that liberty be granted to the plaintiff to make the said claim against the defendants.

7. For the reasons stated in the order dated 22nd February, 2019 and which have not been rebutted, the suit is dismissed, with liberty however to

the plaintiff, to, in accordance with law, if entitled to file a fresh suit for claim under the undertaking aforesaid, institute the same. It is however made clear that all defences of the defendants shall remain open in the fresh suit, if any filed.

8. The suit is dismissed with costs of Rs.1,00,000/- to the defendants.

9. The counsel for the plaintiff states that he has sought liberty to file a fresh suit on the understanding that costs will not be imposed.

10. The costs are waived.

11. Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 07, 2019
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