

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

% Decided on: 29th January, 2020

+ **CS (COMM) 818/2017**

SMT SUNITA DEVI Plaintiff

Represented by: Mr. Sonal Jain, Ms. Kajal Sharma &
Mr. Arjun Mitra, Advocates.

versus

KAPIL KUMAR AHLUWALIA Defendant

Represented by: Mr. Chetan Lokur & Mr. Nitish Chaudhary,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

**I.A. No.10547/2019 (under Order XIII A Rule 3 r/w Order VII Rule 11
CPC by defendant)**

1. By this application, the defendant has sought dismissal of the suit as also rejection of the plaint on the ground that the suit prayers are contrary to the compromise decree passed *inter se* the suit.

2. The present suit has been filed by Sunita Devi who claims to be the second wife of Late Banarsi Dass Ahluwalia who passed away in the year 2005 impleading Kapil Kr. Ahluwalia, the son of Late Banarsi Dass Ahluwalia from his first marriage as defendant.

3. The prayers in the suit are as under :-

“i. *Pass Judgment and Decree of Permanent injunction against the Defendant and in favour of the Plaintiff restraining Defendant from interfering, objecting or*

threatening the Plaintiff from peaceful running of Franchise Business from the Suit Property bearing No.B-20, Connaught Place, New Delhi under parameters of Compromise Settlement and Decree dated 23.03.2009;

- ii. Pass Judgment and Decree of Mandatory injunction in favour of the Plaintiff and against the Defendant to accept the terms and conditions of the freshly executed Franchise Agreement with M/s. SSIPL or accepting any other more profitable franchisor to permit the Plaintiff to run her business from Suit Premises;*
- iii. Pass directions for restraining the Defendant from filing any further vexatious suit or litigation against any proposed franchisor to be engaged for running the business in Suit Premises;*
- iv. Pass decree for recovery of ₹4,13,82,052/- (Rupees Four Crore Thirteen Lakh Eighty Two Thousand and Fifty Two only) along with Pendente lite and future interest at the rate of 18% on account of financial loss and damages suffered by Plaintiff on account of the deliberate and mala fide acts of Defendant against Plaintiff;*
- v. Pass decree for recovery of ₹24 lakh per month along with increment value at the rate of 10% amount after every 12 months for future loss and damages suffered per month by the Plaintiff till recommencement of franchise business by the Plaintiff if on account of Defendant then the Franchise business is rendered inoperational by any continuing or future acts of the Defendant.*

Pass any other or further order which this Hon'ble Court may deem fit and proper in the present facts and circumstances as aforementioned in favour of the plaintiffs and against the defendants in the interest of justice."

4. A prior suit was instituted by the defendant herein against the plaintiff herein being CS (OS) No.661/2007 wherein the defendant herein had challenged the Will and *inter alia* sought a decree of specific performance of the agreement dated 16th August, 1988 executed between Kapil Kumar Ahluwalia and his deceased father and directions to Sunita Devi to execute requisite documents of transfer of tenancy of the property No.B-20, Connaught Place, New Delhi as also the sole proprietorship business of Late Banarsi Dass Ahluwalia besides delivery of possession, rendition of accounts and amounts due and payable to Kapil Kumar Ahluwalia as his 1/3rd share in the franchisee business as per the agreement dated 16th August, 1988 along with injunction and interest, *pendente lite* and future. The said suit and the probate petition were decreed in terms of the compromise deed dated 22nd March, 2009 arrived at between Kapil Kumar Ahluwalia and Sunita Devi by filing an application under Order XXIII Rule 3 CPC. The terms of compromise read as under :-

“DEED OF COMPROMISE

This Deed of Compromise is made on this, the 22nd day of March, 2009 at New Delhi between

Kapil Kumar Ahluwalia resident of B-40, Connaught Place, New Delhi-110001 (hereinafter called the “First Party”) which expression shall, unless repugnant to the context, shall mean and include his respective legal heirs, successors, assigns, representatives, agents, attorneys or any other person claiming through him or on his behalf,

and

Smt. Sunita Devi Ahluwalia, resident of B-104, UNESCO APARTMENTS Plot No. 55, Patparganj, Delhi-110092 (hereinafter called the “Second Party”) which expression shall, unless repugnant to the context, shall mean and include her

legal heirs, successors, assigns, representatives, agents attorneys or any other person claiming through her or on her behalf)

WHEREAS after the demise of Shri Banarsi Dass Ahluwalia, disputes and differences arose between the parties.

AND WHEREAS per the First Party, Late. Shri Banarsi Dass Ahluwalia had died leaving behind a registered Last Will and Testament dated 12.11.1999. The Second Party, on the other hand placed reliance on a subsequent registered last Will and Testament dated 9.9.2002, which they claim superseded any and all prior Wills or codicil of Shri Banarsi Dass Ahluwalia.

AND WHEREAS the First Party filed a suit against the Second Party and her children, namely Smt. Madhu Seth, Smt. Saroj Joshi, Mohinder Ahluwalia, Surinder Ahluwalia and Virender Ahluwalia seeking decrees of Specific Performance of the agreement dated 16.8.1988 executed between him and Late Shri Banarsi Dass Ahluwalia; of Rendition of accounts and Permanent Injunction, being CS (OS) No. 661 of 2007 and which is pending before the Hon'ble High Court of Delhi.

AND WHEREAS the First Party also filed a Petition under Section 213 of the Indian Succession Act, 1925 seeking the grant of probate of the aforesaid Last Will and Testament dated 12.11.1999, being Testamentary Case No. 482 of 2006 and which is pending before the Hon'ble High Court of Delhi.

AND WHEREAS the Executor named in the aforesaid Last Will and Testament dated 9.9.2002 – Shri Surinder Prakash Kalra, Senior Advocate, also filed a Petition under Section 213 of the Indian Succession Act, 1925 seeking the grant of probate of the aforesaid Last Will and Testament dated 9.9.2002, being Testamentary Case No. 56 of 2006 and which is pending before the Hon'ble High Court of Delhi.

AND WHEREAS during the pendency of the suit, the Hon'ble High Court vide order dated 30.9.2008 was pleased to refer the parties to mediation of an independent mediator to be appointed by the Delhi High Court Mediation Cell in view of the nature of the case and relationship of the parties.

AND WHEREAS Shri M.N. Dudeja, Advocate was appointed as a Mediator to resolve the disputes between the parties.

AND WHEREAS in the mediation proceedings Shri Kepil Ahluwalia represented himself and his sisters- Ms. Kanta Bedi, Ms. Bina Shrikent and Ms. Nina Gandhi (Defendant Nos. 7, 8 and 9 to the said suit) and Shri virender Ahluwalia and Mrs. Madhu Seth represented the Second Party und Shri Surinder Ahluwali. Shri Mohinler Ahluwalia and Ms. Saroj Joshi.

AND WHEREAS with the untiring and sincere efforts of the Mediator the Parties were able to resolve their disputes and reached an in principle agreement and the terms of the agreement were reduced into writing by the Learned Mediator on 14.11.2008, was duly countersigned by the authorized representatives of the parties and confirming parties. A copy of the Agreement is annexed hereto as Exhibit 'A'. The First Party agrees to the representation of the Second Party that a Sum of Rs.48,43,587.00 was due to him towards his share of income generated from the business at B-20 Connaught Place, New Delhi and a demand draft bearing No. _____ dated _____ issued by _____ Bank in the sum of Rs.48,43,587.00 was submitted to the Learned Mediator by the Second Party to be handed over to the First Party at the time of the recording of this Agreement before the Hon'ble Court.

AND WHEREAS thereafter the parties sought intervention of the Hon'ble Court for the resolution of certain disputes arising out of the interpretation of the said agreement. During hearings before the Hon'ble Court on 12.3.2009 and 13.3.2009 and with the Intervention and guidance of the Hon'ble Court, the Parties further resolved their disputes. The Second Party agreed that in

addition to sum due to the First Party as stated above, the First Party would be given an additional sum of Rs. 3,25,000.00 from the estate of the Late Shri Banarsi Dass Ahluwalia and the distribution of income generated from the business at B-20 Connaught Place, New Delhi prior to September 2008. The Second Party have submitted Cheque No. _____ dated _____ drawn on Syndicate Bank, Patparganj, Delhi dated 23.3.2009 for ₹ 3,25,000.00 in favour of the First Party to be handed over to the First Party at the time of the recording of this Agreement before the Hon'ble Court. The parties agreed during these hearing that this shall be the final accounting for the period ending September 2008. The parties also agreed that the Second Party shall continue to manage the business operated at B-20 Connaught Place New Delhi during the currency of the present agreements dated 20.03.2008 and 04.04.2008 with Arvind Brands (a division of Arvind Mills Ltd.) subject to the terms of the settlement hereinafter contained.

AND WHEREAS the parties having arrived at a mutually negotiated settlement as aforesaid, before the Learned Mediator and the Hon'ble Court and are desirous of reducing the detailed agreement, compromise and settlement in writing by way of these presents.

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING WITNESSETH

1. As a condition of this agreement, the Parties agree to put an end to all litigation inter-se following manner:

- (i) The parties and the confirming parties hereto shall file an application under the provisions of Rule 3 of Order XXIII of the Code of Civil Procedure, 1908 annexing therewith the present Memorandum and praying to the Court to record the present compromise and decree CS (OS) No. 611 of 2007 "Kapil Kumar Ahluwalia vs. Sunita Devi & Ors" in, terms thereof.*

- (ii) *The First Party shall withdraw Testamentary case No. 482 of 2006 titled "Kapil Kumar Ahluwalia vs. State & Ors" in View of the present compromise having been arrived at.*
- (iii) *The parties shall instruct Shri Surinder Prakash Kalra, Senior Advocate to withdraw Testamentary case No. 56 of 2006 titled "Surinder Prakash Kalra vs. State & Ors". In view of the present agreement, the parties do hereby release and forever discharge and hold harmless the Executor: and his successors and assigns from any and all liability, claim and demands of whatever kind of nature, either in law or in equity, Which arise, or may hereinafter arise from Executors activities related to the Will.*

2. *The parties agree to abide by the registered Will and Testament dated 9.9.2002 executed by late Shri. B.D. Ahluwalia.*

During the period October, 2005 to April, 2007, the business conducted and managed by the Second Party at the retail premises at B-20, Connaught Place, earned income pursuant to a franchise agreement between Shri B.D. Ahluwalia and Smt. Sunita Devi on the one hand and Grand Regency Hospitalities Private Ltd, dated October 01, 2002. The parties agree that the said income so generated between October 2005 till April 2007 will be taken as 100% towards Shri B.D. Ahluwalia estate and to be shared in the following manner;

- (i) *80% share of the said income to Shri Kapil Kumar Ahluwalia.*
- (ii) *20% share of the said income to Smt. Sunita Devi Ahluwalia.*

The amount disbursed/shared will be after deduction of taxes already paid and expenses already incurred.

4. During the period May, 2007 to December 2007, as there was no agreement with Grand Regency Hospitalities Private Ltd., the income generated from property bearing No. B-20, Connaught Place, New Delhi shall be shared in the following manner:

- (i) 60% share of the said Income to Shri Kapil Kumar Ahluwalia.
- (ii) 40% share of the said income to Smt. Sunita Devi Ahluwalia.

The amount disbursed/shared will be after deduction of taxes already paid and expenses already incurred.

5. During the period January, 2008 to September 2008 the business conducted and managed by the Second Party at the premises at B-20, Connaught Place, earned income pursuant to franchise agreements dated 20.03.2008 and 04.04.2008 between Smt. Sunita Devi on the one hand and Arvind Brands (a division of Arvind Mills Ltd.). The parties agree that the said income so generated shall be shared in the following manner:

- (i) 50% share of the said income to Shri Kapil Kumar Ahluwalia.
- (ii) 50% share of the said income to Smt. Sunita Devi Ahluwalia.

The amount disbursed/shared will be after deduction of taxes already paid and expenses already incurred.

6. That the Second Party assures the First Party that amount of Rs 51,68,587.00 is to be paid to the First Party and which amount has been arrived at by application of the agreed principles set out in paragraphs 3, 4 and 5 above and after deduction of the amounts on account related to the termination of the Grand Regency Franchise Agreement. The First Party

acting on the said assurance agrees to accept the said amount which it is further mutually agreed, shall be handed over to the First Party at the time of the recording of his Agreement before the Hon'ble Court,

7. *Smt. Sunita Devi and Shri Kapil Kumar Ahluwalia acknowledge receipt of their 50% each share of lease rights in the property located at B-20 Connaught Place, New Delhi and all confirming parties waive any and all rights to B-20 Connaught Place, New Delhi as heirs to the estate of Banarsi Dass Ahluwalia.*

8. *Smt. Sunita Devi and Shri Kapil Kumar Ahluwalia acknowledge receipt of income distribution for the period ending September 2008 from the operations of franchise business by the Second Party at B-20 Connaught Place, New Delhi in accordance with the present compromise agreement. All confirming parties waive any and all rights to said Income as heirs to the estate of Banarsi Dass Ahluwalia.*

9. *Sri Kapil Ahluwalia acknowledges the receipt of all rights in Flat B – 40 Connaught Place, New Delhi. The 'Second Party waives all rights to this property. The Second Party and the confirming parties hereto undertake not to raise any claims in respect of the said property at any time in the future.*

10. *The parties understand and agree that for the future, i.e., the period commencing January 2008, the income generated from any business or any other arrangement or dispensation carried on in the ordinary course of business from property bearing No. B-20, Connaught Place, New Delhi Shall be shared in the ratio of 50% each between The First and the Second Party, after deduction of reasonable expenses and taxes, if any. The parties clearly understand and agreed that all major decisions pertaining to any business: or any other arrangement or dispensation carried on from property bearing No. B-20, Connaught Place, New Delhi, including, but not limited to, renewal of franchise or other agreements or execution of fresh*

agreements with third parties, shall be by mutual consultation and consent and such consent shall not be unreasonably - withheld. The parties shall conduct themselves in a reasonable, fair and transparent manner. The parties understand that the Second Party shall continue to run and operate the business at B-20 Connaught Place, New Delhi as the same is being presently operated and particularly the present business with Arvind Brands (a division of Arvind Mills Ltd.) shall continue to be managed and operated by the second party. However, Kapil Kumar Ahluwalia being equal co-share of the lease rights shall have joint possession in the premises situated at B-20, Connaught Place, New Delhi.

10.1 The Second party will make all reasonable efforts to include Shri Kapil Kumar Ahluwalia as a party to the existing agreements with Arvind Brands (a division of Arvind Mills Ltd.) by making a request in writing to the said Franchisor with a Copy duly endorsed to the First Party, within 7 days of the execution of this Deed. In the event that the said Franchisor denies the request to include Shri Kapil Kumar Ahluwalia as a to the existing franchise agreements, the Second Party assures the First Party and warrants that disbursement to the First Party will be made within fourteen (14) business days from the date payment is received by the Second Party from the said Franchises. Second Party's failure to make payment under this paragraph 10.1 for three continuous months shall constitute a material breach. In the unlikely event, of a material breach the First Party shall serve a written notice, on the Second Party within a period of seven days. The Second party shall rectify the breach within a period of seven days from the date of receipt of notice Material breach if committed if more than thrice shall entitle the first party to terminate this arrangement, unless waived.

10.2 The parties agree that all profits from business shall be shared equally between Smt. Sunita Devi Ahluwalia and Shri Kapil Kumar Ahluwalia. Profits for the purpose of this

agreement shall be defined as gross income less business expenses and any service, sales and applicable statutory taxes.

11. The parties understand and agree that all legally enforceable future statutory liabilities. If the same should arise, shall be borne in the same ratio that applies to sharing of the income between the First Party and the Second Party.

12. Any and all expenses related to the tenancy of B-20 Connaught Place will be shared equally (50:50) between Shri Kapil Kumar Ahluwalia and Smt. Sunita Devi.

13. Any tax-liabilities, statutory/non statutory charges, liabilities or expenses related to the conduct of the business prior to October, 2005 will be the responsibility of Smt. Sunita Devi.

14. The Second Party, states that to the knowledge all statutory taxes accruing and payable for the estate of Shri Bansari Das Ahluwalia including the business conducted at B-20 Connaught Place, New Delhi have been duly filed and paid with the appropriate authorities. The Second Party assures the First Party and undertakes to handed over to the First Party any and all documents evidencing the payment of the said taxes. The Second Party represents to the First Party that the amounts being paid to the First Party under the present. Agreement have been calculated and arrived at after payment of all applicable taxes payable thereon.

15. All notices permitted or required to be given hereunder shall be considered to have been properly give if sent by Registered/ Speed Post A.D. of the Indian Postal Service of the Government of India at the addresses hereinafter set forth, as follows;

*Second Party
B-104, UNESCO APARTMENTS
Plot no. 55,*

Patparganj, Delhi-110092

First Party

*B-40, Connaught Place,
New Delhi-110001*

16. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

17. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.

18. All representations, warranties and agreements made by Parties shall be considered and binding on their heirs and successors.

19. Both Parties acknowledge that it has performed such due diligence as is deemed required on confirm the representations of the other party contained herein.

20. Each of the parties hereto agrees that it will, at any time, take or cause to be taken such further actions, and execute, deliver and file or caused to be executed, delivered and filed such further documents and Instruments and obtain such consents, as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

21. The parties agree that all financial and business information provided to the other and all otherwise proprietary information in the possession of either party shall remain confidential and no such information shall be disseminated or

disclosed except to affect the purpose of this Agreement. The foregoing provision notwithstanding either party may disclose the restricted information to their accountants and attorneys and other business advisors, all of whom shall be informed of the confidential nature of the materials. This paragraph shall survive the Agreement.

22. The parties mutually agree that pending the amendment to the present agreements dated 23.3.2008 and 04.04.2008 entered into by the Second Party with Arvind Brands (a division of Arvind Mills Ltd.) or execution of a fresh agreement formally inducting the First Party as a Co-franchisee, the interest free refundable security deposit to be held jointly by the First and Second Party. The interest accrued on this deposit, shall be shared equally and deposited in individual accounts of the First and Second Party. The Parties shall take requisite steps towards this end, including opening of necessary bank accounts etc., within 7 days of the execution of this Deed. In the event Arvind Brands agrees to amend the present agreement, the First Party shall then issue cheques of an equal amount, as the Second Party, to and in favor of Arvind Brands (a division of Arvind Mills Ltd.), as security.

In the event, Arvind Brands (a division of Arvind Mills Ltd.) does not agree to amend the present agreement then the Second Party shall continue holding the deposit as aforesaid. The deposit shall be held in a fixed deposit and Second Party shall not withdraw the said security deposit until the completion or termination of the said Franchise Agreement, whichever is earlier. The interest accrued on this deposit, shall be shared equally and deposited in individual accounts of the First and Second Party and it shall be the obligation of the Second Party to so do.

23. That the Second Party categorically assures, represents and certifies to the First Party that save and except the Agreement dated 20.03.2008 and 04.03.2008 entered into between the Second Party and Arvind Brands (a division of

Arvind Mills Ltd.) there is no other, further or supplementary agreement, arrangement or dispensation of any nature whatsoever between the Second Party, with either the said Arvind Brands (a division of Arvind Mills Ltd.) or any other sister concern, group company, division of Arvind Mills Ltd. or with Arvind Mills Ltd.

24. The Second Party represents that she has disclosed and made available to the First Party all of the accounts and income received from the business conducted by her at B-20 Connaught Place, New Delhi upto September 2008. The Second Party further states that to the best of her knowledge the Liquor License obtained by the late Shri Banarsi Das Ahluwalia was to facilitate the business conducted under the Grand Regency Franchise Agreement and she or BDA Estate or any of the Legal heirs of the Second Party have not received and additional income from the obtaining of said license.

25. The parties hereby for themselves/itself and their affiliates, successors and assign remises, releases, and forever discharge each other, their heirs, executors, assigns and administrators, of and from all debts, demands, actions, causes of actions, suits, dues, sum and sums of money, accounts, reckonings, bonds, specialties, covenants, contracts, controversies, agreements promises, doings, omissions, variances, damages, extents, executions, and liabilities whatsoever, both in Law and Equity which are derived in any fashion by and/or which relate in any way to any all actions, including and not limited to B.D. Ahluwalia estate distribution, B.D. Ahluwalia will and the operation of franchise business at B-20 Connaught Place from the beginning of time to the date of this Agreement.

26. The Parties clearly understand and agree that any incorrect statement, assurance, representation, warranty made by either Party as recorded in the present Deed would render the present agreement void and non est.

27. That the second Party has supplied to the First Party, copies of agreements dated 20.03.2008 and 04.04.2008 entered into by the Second Party with Arvind Brands (a division of Arvind Mills Ltd.). The said copies so supplied have been duly certified to be true copies of their respective originals by the Second Party. The Second Party assures the First Party and undertakes that the originals of the said agreements shall be made available for the inspection of the First Party on or before 15.05.2009.

WHEREFORE, the parties and the confirming parties hereto have read the above Agreement and attest that they fully understand and knowingly and voluntarily accept its provisions in their entirety without reservation.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as set forth and represent that they have carefully read the foregoing Agreement, fully understand the terms and conditions of such Agreements, and are knowingly and voluntarily executing the same. Parties acknowledge that they have been informed by their respective counsel and understand that this Agreement contains a general release of all claims known or unknown.

Kapil Kumar Ahluwalia
FIRST PARTY

Smt. Sunita Devi
SECOND PARTY
Through constituted attorney
Smt. Madhu Seth presently resident of B-104,
UNESCO APARTMENTS
Plot No. 55, Patparganj, Delhi-110092

Confirming Parties
Bina Shikent
Through constituted attorney
Shri Narendra Mohan Bedi,
Son of Shri Gopal Krishna Bedi,
Resident of 76, Vasant Enclave, New Delhi-110057"

5. A perusal of Clause 10 of the agreement between the parties clearly notes that for the future, i.e., period commencing January, 2008, the income generated from any business or any other arrangement or dispensation carried on in the ordinary course of business from property bearing No. B-20, Connaught Place, New Delhi shall be shared in the ratio of 50% each between Kapil Kumar Ahluwalia and Sunita Devi after deduction of reasonable expenses and taxes, if any. It was also decided that all major decisions pertaining to any business or any other arrangement or dispensation carried on from property bearing No.B-20, Connaught Place, New Delhi, including but not limited to renewal of franchise or other agreements or execution of fresh agreements with third parties shall be by mutual consultation and consent and such consent shall not be unreasonably withheld. The parties were directed to conduct themselves in a reasonable, fair and transparent manner and that Sunita Devi was to continue to run and operate the business at B-20, Connaught Place, New Delhi as the same was being operated particularly the business with Arvind Brands (a division of Arvind Mills Ltd.), however, Kapil Kumar Ahluwalia being equal co-sharer of the lease rights shall have joint possession in the premises situated at B-20, Connaught Place, New Delhi.

6. The case of the defendant is that the first two prayers in the present suit, as noted above, are clearly contrary to the joint decree passed on a compromise between the parties in CS (OS) No.661/2007 and thus, not maintainable. It is also stated that the plaintiff not only executed the franchisee agreement after the settlement was arrived at between the parties and the compromise decree passed without the consent of Kapil Kumar

Ahluwalia but also renewed the same as is evident from the documents placed on record.

7. Plaintiff seeks relief in terms of prayers 3, 4 and 5 on the ground that in view of Kapil Kumar Ahluwalia having filed a suit against the plaintiff, Sunita Devi and the franchisee, the franchisee left the property B-20, Connaught Place, New Delhi in February, 2015 thereby causing loss to Sunita Devi which needs to be compensated.

8. A perusal of the record filed by the plaintiff reveals that the franchisee agreement between Sunita Devi was entered into on 20th March, 2008 initially for a period of three years which was further renewed twice. The said agreement was renewed in the year 2011 and also in the year 2014 and there is not one document on record filed by the plaintiff which shows that the plaintiff took the consent of Kapil Kumar Ahluwalia or that the franchisee agreement was entered into with or renewed with the mutual understanding with Kapil Kumar Ahluwalia as provided in the lease deed. Kapil Kumar Ahluwalia filed the suit only in the year 2012 after the first franchisee agreement was entered into and ran through its period of three years and a renewal agreement was also entered into in the year 2011, both without consent and mutual understanding of Kapil Kumar Ahluwalia.

9. To show that the plaintiff has been trying to call up and send the draft agreements to Kapil Kumar Ahluwalia, however he did not respond, learned counsel for the plaintiff relies upon the emails dated 25th February, 2016, 26th February, 2016 and 28th April, 2016.

10. A perusal of the said emails shows that the same relate to a draft joint operating agreement, that is a proposed agreement on the basis of which Sunita Devi sought further business to be run and not the franchisee

agreement or the renewal of the franchisee agreement as entered into between Sunita Devi and the third party. It is also a matter of record that though initially the franchisor was impleaded as a party to the suit by Kapil Kumar Ahluwalia being CS (OS) No.3165/2012 before this court which was returned to be filed in the court of proper pecuniary jurisdiction and was never re-filed, however, after filing of the said suit, Kapil Kumar Ahluwalia gave up the reliefs qua the franchisor of the parties.

11. Learned counsel for the plaintiff refers to para 22 of the present plaint to state that the plaintiff with great difficulty in the dipped economic scenario has been able to find a suitable franchisor to run a business from the suit property on a profitable basis to both the plaintiff and the defendant and tried calling the defendant on his cell phone many times during the past ten days to amicably discuss the business prospects but the defendant did not take up the call and remained elusive and hence the plaintiff proceeded to move forward with the business and in principle decided to recommence the business from the suit property with a newly acquired franchisor M/s. Sports Station India Private Limited with clear intention of paying 50% share of the profits to the defendant *bona fide* as per the terms of compromise settlement dated 22nd March, 2009.

12. Learned counsel for the plaintiff states that it cannot be said that the contents of the suit and the documents relied upon do not disclose any cause of action and there is no prospect of the suit succeeding as the plaintiff would be at liberty to prove that despite his making phone calls, the defendant did not reply.

13. The suit was filed on 7th November, 2017. Neither any document has been filed nor any record filed to show that the plaintiff made ten phone

calls to the defendant which were not received, and in the absence thereof, it would not be possible for the plaintiff to prove that she made efforts to get in touch with the defendant. Further, this plea is also without any basis as no other document to show the *bona fide* of the plaintiff that she wanted to show and seek consultation/consent of the defendant for entering into a new franchisee business has been placed on record in the form of any email etc. which if the plaintiff would have sent to the defendant, there would have been material before this court to ascertain the correct facts.

14. Considering the fact that there is no likelihood of the suit succeeding and prayers (i) and (ii) in the suit are contrary to the terms of compromise decree, prayer (iii) in the suit is contrary to Section 41B of the Specific Relief Act and prayers (iv) and (v) being consequential to prayer (i) and (ii) no relief in terms thereof can be granted, the application is allowed dismissing the suit.

CS (COMM) 818/2017 &
I.A. No.14220/2017 (under Order XXXIX Rule 1 & 2 CPC)

Suit along with the pending application is dismissed with cost of ₹1 lakh.

(MUKTA GUPTA)
JUDGE

JANUARY 29, 2020
‘AA’