

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021

PRONOUNCED ON : 10.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.A.No. 302 of 2020

and A.No.1652 of 2020

and A.Nos.13 & 261 of 2021

in C.S.No.183 of 2020

K.Suresh Prabhu

... Applicant/Plaintiff

[O.A.No.302 & A.No.1652/2020]

S.Ramesh

... Applicant/Defendant

[A.Nos.13 & 261/2021]

Vs.

S.Ramesh

... Respondent/Defendant

[O.A.No.302 & A.No.1652/2020]

K.Suresh Prabhu

... Respondent/Plaintiff

[A.Nos.13 & 261 of 2021]

Prayer in O.A.No.302 of 2020:-

Original Application is filed under Order XIV Rule 8 of O.S.Rules r/w Under Order XXXIX Rule 1 and 2 of CPC, to pass an order of interim injunction restraining the respondent/defendant and his men, agents and servants etc., from interfering and disturbing the applicant/plaintiff's peaceful

possession and running his business in the name of C3 Fitness Science at No.11/1, Ritherdon Road, Vepery, Chennai - 600 007 and at No.17, Lakshmi Street, Kilpauk, Chennai - 600 010.

Prayer in A.No.1652 of 2020:-

Application is filed under Order XIV Rule 8 of O.S.Rules r/w Under Order XXXVIII Rule 1, 2 and 5 of CPC to furnish security for the value of the suit claims amounts of Rs.1,87,39,550/- failing which order for attachment before judgment of movable properties available at the property morefully described in the schedule.

Prayer in A.No.13 of 2021:-

Application is filed under Order XIV Rule 8 of O.S.Rules r/w Sections 5 & 8 of the Arbitration and Conciliation Act, 1996, directing the parties to refer the disputes in the Arbitration proceedings in accordance with Clause 20(b) of the Franchise Agreement dated 13.12.2017 entered into between the Applicant/Defendant with respondent/plaintiff herein.

Prayer in A.No.261 of 2021:-

Application is filed under Order XIV Rule 8 of O.S. Rules and Under Order XI Rule 5 of Commercial Division Act r/w Section 73 of CPC and r/w Order XXXI Rule 9 of CPC., to produce the original Franchise Agreement dated 13.12.2017, which contain the Arbitration Clause.

Applicant in O.A.No.302 of 2020 and
A.No.1652 of 2020 and Respondent
in A.No.13 of 2021 and A.No.261 of 2021 : Mr.K.S. Ganesh

Respondent in O.A.No.302 of 2020 and
A.No.1652 of 2020 and Applicant
in A.No.13 of 2021 and A.No.261 of 2021 : Mr.V. Balasubramanian

COMMON ORDER

1. O.A.No.302 of 2020 has been filed by the plaintiff K.Suresh Prabhu, seeking an order of interim injunction restraining the defendant S.Ramesh from interfering and disturbing with peaceful possession of the business, "C3 FITNESS SCIENCE" at Vepery and at Kilpauk.

2. A.No. 1652 of 2020 has also been filed by the plaintiff under Order 38 Rule 1, 2 and 5 of CPC., for a direction against the defendant to furnish security to the value of the suit claim failing which to attach the movables and the property given in the schedule to the Judges Summons.

3. A.No.13 of 2021 had been filed by the defendant seeking to refer the disputes to arbitration in accordance with Clause 20(b) of the Franchise Agreement dated 13.12.2017.

4. A.No.261 of 2021 had been filed by the defendant calling upon the plaintiff to produce the original Franchise Agreement dated 13.12.2017.

5. In the plaint, the plaintiff K.Suresh Prabhu stated that he had conceived a trade mark by name C3 Fitness Science in the field of Body Building Gyms, Health Clubs and Fitness Centres. He has been carrying on business after obtaining licences and permissions from the various authorities. He claimed that he was running the businesses in rental premises at New No.11/1, Ritherdon Road, Vepery, Chennai, by entering into a lease deed with the owners of the property and at No.17, Lakshmi Street, Kilpauk, Chennai, again by entering into a lease agreement with the owners of the property. He also claimed that he had obtained licences from the Greater Chennai Corporation and from Udyog Aadhar Memorandum from the Ministry of Micro, Small, Medium Enterprises and also licence from the Office of the Commissioner of Police, Chennai. He had also obtained GST Registration Certificate from the Government of India.

6. It had been further stated that the defendant was running the business of Fitness Centre in the name UNIQUE ONE as a proprietary concern. It had been further stated that in 2016, the defendant approached the plaintiff for a business loan of Rs.1.25 crores. The plaintiff claims to have advanced the said amount on various dates in 2016. The defendant also executed a promissory note. The defendant made some part repayments towards the said loan. In May 2017, the defendant again approached the plaintiff for financial investment to develop his business UNIQUE ONE at New Washermanpet and at Perambur. The plaintiff and his known persons Mrs.J.Poornima and Mr.S.Purushothaman made a financial investment of Rs.60,00,000/- and a Memorandum of Agreement dated 12.05.2017 had been entered into between the parties. The plaintiff stated that out of the said amount, the plaintiff had paid a sum of Rs.40,00,000/-. The defendant agreed to repay a sum of Rs.1,46,650/- towards interest every month. Similarly, he also agreed to pay interest to Mrs.J.Poornima and Mr.S.Purushothaman.

7. The plaintiff further stated that in December 2017, the defendant approached the plaintiff for franchise to use the plaintiff's trade mark of C3 FITNESS SCIENCE for his Fitness Centre at No.126, M.S. Kovil Street,

Royapuram, Chennai. The plaintiff and the defendant entered into a Franchise Agreement on 13.12.2017. The defendant agreed to pay a sum of Rs.30,000/- every month as royalty for using the name C3 Fitness Centre Science. The plaintiff further claimed that the defendant had borrowed a total sum of Rs.1.35 crores between November 2018 and February 2019. The defendant executed three promissory notes, the first dated 28.11.2018 for Rs.40,00,000/-, the second dated 10.01.2019 for Rs.50,00,000/- and the third dated 25.02.2019 for Rs.45,00,000/-. The defendant also issued post dated four cheques for Rs.30,00,000/- dated 15.07.2020, for Rs.35,00,000/- dated 15.08.2020, for Rs.35,00,000/- dated 15.09.2020 and for Rs.35,00,000/- dated 15.10.2020.

8. The plaintiff further stated that in February 2020, the defendant again approached the plaintiff for a further loan of Rs.20,00,000/-. Even though, there was a huge amount which remained unpaid by the defendant, since the defendant agreed to repay the same and had issued post dated cheques, the plaintiff agreed to arrange the loan of Rs.20,00,000/-. The plaintiff also issued four post dated cheques for Rs.5,00,000/- each dated 22.02.2020, 22.03.2020, 22.04.2020, and 22.05.2020 respectively all drawn on Punjab National Bank, Anna Nagar, Chennai-600 040. The first cheque

for Rs.5,00,000/- was cleared on presentation for payment. The remaining cheques could not be paid by the plaintiff owing to the COVID-19 Pandemic and therefore, he issued 'stop payment' instruction to his banker. The plaintiff stated that the defendant however, claimed by way of electronic mail that he had invested 50% of the amount in the Vepery and Kilpauk branches in C3 Fitness Centre Science and further claimed that the said mark as his and that the plaintiff was the only an investor. The plaintiff objected to that stand and reiterated the fact that he was the Sole Proprietor and also drew attention to the various financial transactions. The plaintiff claimed that there was still a sum of Rs.39,59,550/- payable by the defendant to the plaintiff after adjusting the interest, royalty and repayment of the loan amounts. The plaintiff further claimed that a sum of Rs.7,80,000/- was due from the defendant towards royalty amount payable from January 2018 to February 2020. The plaintiff also claimed a sum of Rs.1.40 crores which the defendant borrowed was also due and payable. The plaintiff stated that the defendant had taken a stand that he was the owner of the businesses at Vepery and at Kilpauk and that the plaintiff was only an investor. It is under these circumstances that the suit had been filed seeking recovery of Rs.39,59,550/- and a sum of Rs.7,80,000/- and a sum of Rs.1.40 crores and for permanent injunction restraining the defendant from interfering with the peaceful

possession of the plaintiff.

9. The averments in the affidavit filed in support of O.A.No.302 of 2020 and A.No.1652 of 2020 were practically the same.

10. These two applications came up for consideration on 11.09.2020. Notice was directed in Application No.1652 of 2020 and in O.A.No.302 of 2020 an order of interim injunction was granted. The said order is still in force. The defendant entered appearance on receipt of notice and filed his counter affidavit.

11. In the counter affidavit filed in O.A.No.302 of 2020, the defendant denied the averments made in the plaint and stated that the suit had been instituted after the defendant had issued a legal notice claiming a sum of Rs.2.70 crores. The defendant stated that he started his fitness carrier in 2002 and had been appointed as Fitness Trainer in various Fitness Centres. He also started his own business in July 2015 in the name, UNIQUE ONE. In July 2016, he started a Fitness Centre in the name, C3 Fitness Science Elite, a UNIQUE ONE in Perambur and in March 2017, at Royapuram and in April 2017, in MKB Nagar, Chennai. He had also secured several awards

as Fitness Champion and he had also conducted business Fitness Centres. The defendant claimed that the plaintiff had been training as a customer in the Fitness Centre called "Fitness One" from 2010 to March 2017. He was introduced to the defendant in 2015. The plaintiff expressed interest to render financial assistance. Thereafter, the plaintiff along with Mrs.J.Poornima and Mr.S.Purushothaman had advanced a sum of Rs.60,00,000/- to the defendant for the development of his business. Out of the said amount, the plaintiff had paid a sum of Rs.40,00,000/- and the other two individuals paid a sum of Rs.10,00,000/- each. The defendant agreed to pay Rs.1,46,650/- to the plaintiff every month and Rs.36,675/- every month to Mrs.J.Poornima and Mr.S.Purushothaman. These payments were to be adjusted with the interest. The defendant further stated that he was not in a position to continue the business C3 Fitness Centre Science Elite as he was involved in other business activities and had taken a franchise in the name of Fitness One. As per the terms of that Franchise Agreement, there was an embargo on the defendant to run any Fitness Centre in any other name. The defendant had therefore requested the plaintiff to maintain the business at Vepery and at Kilpauk. The plaintiff agreed to adjust the loan repayment payable by the defendant from the profits earned from the above two entities.

12. The defendant further stated that as mutually agreed the plaintiff and the defendant both shared an amount of Rs.3 crores as their contribution to run the Gym at Vepery and at Kilpauk. The defendant also gave a detailed Tabular Column giving the amounts transferred to the plaintiff and the expenses incurred for purchase of equipments. He also claimed that he paid a balance share of Rs.1.12 crores to the plaintiff on various occasions. Trusting the words of the plaintiff, the defendant had assigned the management of the Gyms in the name of C3 Fitness Science Elite at Vepery and at Kilpauk from November 2017. The plaintiff was also authorised to maintain the bank account. The defendant further stated that the plaintiff used to provide monthly statements in white paper and the defendant did not take that as an issue in view of the relationship between the parties. The defendant stated that the plaintiff had prepared a false profit and loss account and had also created fraudulent names as employees with intention to deduct the salary in their names. The defendant further claimed that the plaintiff created false expenses like incentives to employees, paper advertisement, electricity bill deposit, employees salary and had thus taken away the amounts from the defendant. The defendant also claimed that the plaintiff had not maintained proper accounts for the expenses incurred. The defendant claimed that the plaintiff had debited an amount of Rs.2,00,000/-

every month under fraudulent headings. The defendant also claimed that the plaintiff had secreted an amount of Rs.50,00,000/- while running the two Gyms. Finally in February 2020, the plaintiff had agreed to settle an amount of Rs.2.05 crores to the defendant as full and final settlement to be paid on or before 31.06.2020. The plaintiff also agreed to pay a sum of Rs.20,00,000/- as additional income towards interest. It is for that purpose that the plaintiff issued four cheques for Rs.5,00,000/- each. The first cheque was cleared when presented for payment. The other three cheques had been returned as 'Payment Stopped'. The defendant therefore issued a notice under Section 138 of the Negotiable Instruments Act, 1886, calling upon the plaintiff to pay the sum of Rs.5,00,000/- as agreed. He also called upon the plaintiff, by notice dated 08.06.2020 to pay the total amount of Rs.2.70 crores. The plaintiff issued a reply on 17.06.2020. The defendant issued a rejoinder on 04.08.2020. The defendant closed the Fitness Centres as directed by the Government owing to the COVID-19 Pandemic. The defendant then found that the plaintiff had removed the office of the defendant in the Fitness Centre at Kilpauk and had also taken signed documents and blank cheques from the Fitness Centre. The plaintiff did not permit the defendant to access the C3 Fitness Science Elite Gym at Kilpauk and locked the same. The defendant gave a police complaint before the Inspector of Police, G3 Kilpauk Police

Station on 12.09.2020 to take action against the plaintiff. The defendant further stated that on 17.09.2020 the plaintiff encroached into the business centres at Vepery and at Kilpauk. The defendant approached the Police to take action against the plaintiff. It was only at that stage that the defendant came to know about the institution of the suit and the orders of injunction. The defendant specifically denied each and every allegation made out in the plaint particularly with respect to the financial transactions. The defendant sought that the order of interim injunction should be interfered with.

13. Application No.1652 of 2020 had also been filed in the same lines and the plaintiff sought a direction against the defendant to furnish security to the value of the suit claim.

14. The defendant filed Application No.13 of 2021 to refer the issue before Arbitration. It had been stated that among other reliefs the plaintiff had also sought a relief with respect to non-payment of royalty. This was based on a Franchise Agreement dated 13.12.2017 and the said agreement contained a Clause to refer disputes to Arbitration. Placing strong reliance on that fact, the defendant had filed the said application.

15. The plaintiff filed a counter affidavit to the said application

stating that the reliefs sought in the plaint are based on different causes of action. It had been stated that only one relief was with respect to non-payment of royalty. It had also been stated that the plaintiff had given a complaint with the police. It had been stated that there was no merit in the said application.

16. Pending that application, the defendant filed Application No.261 of 2021 calling upon the plaintiff to file the Original Franchise Agreement dated 13.12.2017 into Court. By a memo dated 05.02.2021, the plaintiff filed the Original Franchise Agreement into Court.

17. Heard arguments advanced by Mr.K.S.Ganesh Babu, learned Counsel for the plaintiff and Mr.V.Balasubramanian, learned Counsel for the defendant.

18. As stated the plaintiff had filed O.A.No.302 of 2020 and Application No.1652 of 2020, and the defendant had filed an Application No.13 of 2021 and Application No.261 of 2021. For the sake of the parties shall be referred as plaintiff and defendant.

19. I am deeply conscious that while examining the issues raised in

the applications, the issues mirror the averments made in the plaint. Therefore, it would not be appropriate on my part to examine the averments in detail. However, it is obvious that both the plaintiff and the defendant have become entangled in a wide web of intricate financial transactions. In the midst of all these, they also claim rights over the Fitness Centres by name C3 Fitness Centre Science at Vepery and at Kilpauk.

20. A perusal of the rival contentions reveal that the defendant claims that he had commenced the two Fitness Centres and that the plaintiff used to come there as a customer. Thereafter, the plaintiff offered to give financial assistance. The plaintiff and two other individuals who are not parties to the suit by name Mrs.J.Poornima and Mr.S.Purushothaman had paid a sum of Rs.60,00,000/- to the defendant. The plaintiff's contribution was Rs.40,00,000/-. The defendant had agreed to repay the amount every month by paying a sum of Rs.1,46,650/- as interest to the plaintiff and Rs.36,675/- to Mrs.J.Poornima and Mr.S.Purushothaman respectively. There had been defaults in the repayment of the said amounts.

21. It is the case of the plaintiff that the defendant had also

borrowed a further sum of Rs.1.35 Crores between November 2018 and February 2019. The defendant had executed three promissory notes and issued four post dated cheques. The defendant had also sought a further loan of Rs.20,00,000/- from the plaintiff. The plaintiff had issued four post dated cheques in this regard. The first cheque was honoured and the plaintiff issued instructions to 'Stop Payment' with respect to the other three cheques. Quite independent of the above financial transactions which in fact were independent to each other, the plaintiff and the defendant had entered into a Franchise Agreement with respect to using the mark C3 Fitness Science at another outlet at Royapuram. The defendant agreed to pay a sum of Rs.30,000/- towards royalty charges for using the trade mark.

22. It is under these circumstances, when disputes had arisen, that the defendant first issued a notice to the plaintiff claiming right over the two Fitness Centres at Vepery and at Kilpauk. Thereafter, the plaintiff appears to have filed the present suit claiming rights over the same two centres and orders of ex-parte injunction had also been granted.

23. A casual perusal of the plaint would reveal that the suit had been

filed based on separate causes of action. The first relief for a sum of Rs.39,59,550/- together with interest had been claimed on the basis of a Memorandum of Agreement dated 12.05.2017. The second relief for payment of Rs.7,80,000/- had been based on the Franchise Agreement dated 13.12.2017. The third relief for a sum of Rs.14,00,000/- had been based on the three promissory notes and Confirmation letter cum promissory note's dated 28.11.2018, 10.01.2019, 25.02.2019 and 22.02.2020 respectively.

24. Clause 14 of the Letters Patent Act, is as follows:-

14. Joinder of several causes of action: - And we do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

25. Where a plaintiff has several causes of action against a defendant, an application should be filed under Clause 14 of the Letters Patent seeking permission to join the causes of action and the Court should issue notice to the defendant before granting any permission to join the causes of action. The plaintiff had not taken such a step. The frame of the suit itself will have to be revisited.

26. With respect to the two Fitness Centres at Vepery and at Kilpauk, there are again two rival contentions. The plaintiff claims that he is the Proprietor of the trade mark C3 Fitness Centre. Registration of the said trade mark had not been done. However, the plaintiff claims right to run the two outlets based on rental agreements and licences obtained from various authorities. The contention of the defendant is that he was a sports specialist particularly a Fitness specialist and had a pre-existing arrangement to run UNIQUE ONE Fitness Centre under a Franchise Agreement and among the terms of that Franchise Agreement was that the defendant should not operate any other Fitness Centre and for that purpose he had permitted the plaintiff to run the two Fitness Centres at Vepery and at Kilpauk with obligation to provide accounts. Both these rival contentions can be tested only during the time of trial. Therefore, it is only appropriate that the status *ante* the

institution of the suit is restored. Continuation of grant of injunction particularly since the defendant also claims that a pre-existing right over the two centres would not be appropriate.

27. Referring the parties to Arbitration may also not be proper at this stage because, admittedly, the suit is based on separate causes of action and only one part of cause of action was based on the Franchise Agreement which had a clause for Arbitration. In view of the complicated nature of the suit, I am afraid, the plaintiff will have to re-visit the frame of the suit and thereafter claim reliefs.

28. Insofar as the Application No.261 of 2021 is concerned, since the Arbitration Agreement had been filed into Court, the application has become infructuous and accordingly, it is closed. No costs.

29. With respect to Application No.13 of 2021 since the suit is based on several causes of action and one cause of action alone relates to the Franchise Agreement dated 13.12.2017 and it would not be possible to bifurcate the claims of the plaintiff and forward one claim to the Arbitrator and retain other claims to be decided over the suit. I hold that, the

Application cannot be considered and accordingly, it is dismissed. No costs.

30. With respect to O.A.No.302 of 2020 owing to the totally divergent contentions of the plaintiff and the defendant, I hold that a *prima facie* case has not been made out as originally projected by the plaintiff. The balance of convenience is not in favour of the plaintiff. It is the case of the defendant that he had started the two outlets at Vepery and at Kilpauk. It is the case of the defendant that he had purchased the equipments. It is the case of the defendant that he had permitted the plaintiff to act as a Manager to run the two businesses. It is the case of the plaintiff that he had obtained necessary permissions from various authorities. It would only be appropriate that both the plaintiff and the defendant graze the witness box and adduce evidence in support of their respective claims. Therefore, I am not inclined to extend the injunction order any further and accordingly, the said application is dismissed. No costs

31. With respect to Application No.1652 of 2020 again, it is seen that there are conflicting versions put forth by both the parties. The defendant has denied any liability. In fact, the defendant claims that the plaintiff should pay a sum of Rs.2.70 crores to the defendant. Therefore, it

would only be appropriate that the plaintiff establishes the claims during trial before he seeks any order directing the defendant to furnish security. In view of these facton, application is dismissed. No costs.

32. In the result:

- (i) O.A.No.302 of 2020 is dismissed. No costs.
- (ii) A.No. 1652 of 2020 is dismissed. No costs.
- (iii) A.No.13 of 2021 is dismissed. No costs.
- (iv) A.No.261 of 2021 is closed. No costs.

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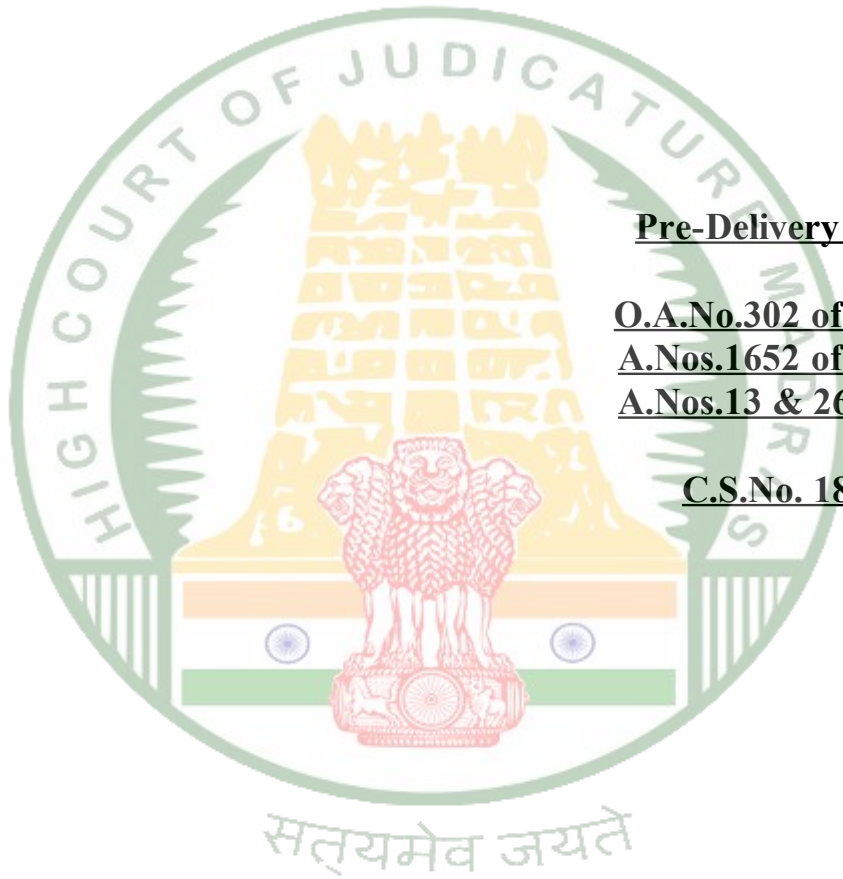
Index : Yes/No

Internet : Yes/No

Speaking Order : Yes/No

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C.V.KARTHIKEYAN, J.



Pre-Delivery Order in

O.A.No.302 of 2020 and

A.Nos.1652 of 2020 and

A.Nos.13 & 261 of 2021

in

C.S.No. 183 of 2020

10.03.2021

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