

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

OA.Nos. 699 to 702 of 2020

Aasife Biriyani (P) Ltd.,
Glr's No. 325, D:NO.11/3Q,
Railway Station Road,
Alandur, Chennai - 600 016
Tamil Nadu, India.

...Applicant in all applications

Vs

Mr. Bhasitrahaman

... Respondent in all applications

Prayer in all applications: Application filed under Order XIV Rule 8 of Original Side Rules Read with Section 9 (ii) (b) (e) of the Arbitration and Conciliation Act, 1996 praying to:

- i) An interim injunction restraining the respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the registered trademark of the

applicant having registration number 3768877, or any other word/words/logo/artistic work/device that are identical or deceptively similar to the said registered Trademark of the applicant in class 43 and thereby restraining the respondent from in any manner infringing the registered trademark of the applicant pending final adjudication of the disputes between the applicant and the respondent through arbitration.

(ii) An interim injunction restraining the respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person of his/their services by using the word mark "Aasifaa Biryani" or label mark 'Asifaa' artistic work, or any other work/words/logo/artistic work/design/device that are identical or deceptively similar to the said mark of the applicant in respect of providing food and drinks, temporary accommodation, and thereby restraining the respondent in any manner from passing off, pending final adjudication of the disputes between the applicant and the respondent through arbitration;

(iii) An interim injunction restraining the respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business,

representatives and any other person from violating the copyright of the applicant by using the artistic work, **anifa ("Anifa Biryani")** or any other logo/artistic work/design/device that are identical or deceptively similar to the said copyright of the applicant, and thereby restraining the respondent in any manner violating the copyright of the applicant, pending final adjudication of the disputes between the applicant and the respondent through arbitration.

(iv) An interim injunction restraining the respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from passing off his/their services by using the work mark "**Anifa Biryani**" or label mark **anifa** , artistic work, or any other word/words/logo/artistic work/design/device that are identical or deceptively similar to the said mark of the applicant in respect of providing food and drinks, temporary accommodation, and thereby restraining the respondent in any manner from passing off, pending final adjudication of the disputes between the applicant and the respondent through arbitration.

For Applicant
in all applications : M/s. Mission Legal

For Respondent
in all applications : Mr.K. Venkataramani, Senior Counsel
for M/s. GK Law firm

COMMON ORDER

A common order is being passed in all the above applications.

2. The applicant has knocked the doors of this Court on the ground that the Franchisee appointed by him has not only failed to pay the Franchisee fee but has also created two trade marks similar in colour and appearance to that of the applicant.

3. Considering the fact that there has been a violation of the terms of the Franchise Agreement, the applicant has moved this Court for various orders of interim injunction.

4. The following are the reliefs that are being claimed by the applicant.

i) An interim injunction restraining the respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from infringing the registered trademark of the applicant having registration number 3768877, or any other word/words/logo/artistic work/device that are identical or deceptively similar to the said registered Trademark of the applicant in class 43 and thereby restraining the respondent from in any manner infringing the registered trademark of the applicant pending final adjudication of the disputes between the applicant and the respondent through arbitration.

(ii) An interim injunction restraining the

respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person of his/their services by using the word mark "**Aasifaa Biryani**" or label mark '**Asifaa**' artistic work, or any other work/words/logo/artistic work/design/device that are identical or deceptively similar to the said mark of the applicant in respect of providing food and drinks, temporary accommodation, and thereby restraining the respondent in any manner from passing off, pending final adjudication of the disputes between the applicant and the respondent through arbitration;

(iii) An interim injunction restraining the respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business,

representatives and any other person from violating the copyright of the applicant by using the artistic work, **anifa ("Anifa Biryani")** or any other logo/artistic work/design/device that are identical or deceptively similar to the said copyright of the applicant, and thereby restraining the respondent in any manner violating the copyright of the applicant, pending final adjudication of the disputes between the applicant and the respondent through arbitration.

(iv) An interim injunction restraining the respondent, all his principal officers, staff, men, agent, servants, successors, assigns in business, representatives and any other person from passing off his/their services by using the work mark **"Anifa Biryani"** or label mark **anifa**, artistic work, or any other word/words/logo/artistic

work/design/device that are identical or deceptively similar to the said mark of the applicant in respect of providing food and drinks, temporary accommodation, and thereby restraining the respondent in any manner from passing off, pending final adjudication of the disputes between the applicant and the respondent through arbitration.

5. After hearing the counsel, this court had initially granted an order of injunction on 16.12.2020 in all the above applications. After the respondent had entered appearance he brought to the notice of this Court the fact that the applicant herein has earlier filed a suit OS.No.362 of 2019 on the file of the Principal District Court, Chengalpet against the respondent making the very same allegations and seeking an injunction restraining the respondent, their men and agents, assigns and legal representatives from using trade name/trade mark "**ANIFA**", which is the subject matter of

A.Nos.701 and 702 of 2020 and the said suit is still pending before the Principal District Court, Chengalpet and the applicant is guilty of forum shopping and is therefore not entitled to any order of injunction.

6. The cause of action for the above suit is the Franchise Agreement dated 15.03.2018 which is the very same cause of action that has been pleaded in these applications. In the said suit, the respondent had entered appearance and a detailed written statement had also been filed.

7. It appears that no interim orders have been granted to the applicant in the said suit, though they have taken out an application for interim orders. Thereafter this Court has been moved. While the proceedings are pending before this Court, it appears that the applicant had moved the Principal District Court, Chengalpet with an application to advance the hearing of the suit so as to enable the applicant to withdraw the said suit. Such an application has been filed only after the respondent had appeared before this Court and brought to the notice of the Court the suit OS.No.362 of 2019.

8. The conduct of the applicant is nothing short of forum shopping and this conduct has to be deprecated. The relief of injunction being a discretionary relief has to be granted to a person who has come to Court with clean hands and who has not suppressed any fact from the Court. The applicant who has filed the suit as early as in October 2019 and who has been diligently contesting the same before the District Court, Chengalpet moved this Court totally suppressing the pendency of the proceedings before that Court.

9. In the light of the above, this Court does not deem it fit to continue the interim orders and the applications are dismissed. However, there shall be no order to cost.

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Index : Yes/No
Speaking order/non-speaking order

10/11

P.T.ASHA, J.

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