



O.A.No.214 of 2024

WEB COPY

O.A.No.214 of 2024

KRISHNAN RAMASAMY, J.,

This application has been filed to grant an order of interim injunction restraining the respondent from continuing to use the registered Trade Mark of the applicant as in Mohammed Anifa Biriyani in the premises at Mohammed Anifa Biriyani at opposite to Flower Market, Melur Main Road, Mattuthavani, Madurai 625 007.

2. In the present case, the parties had entered into a Franchise Agreement dated 05.12.2021, however, the same was terminated vide a legal notice dated 05.10.2023. Even after the termination of the said Franchise Agreement, the respondent had continued to use the registered Trade Mark of the applicant as in Mohammed Anifa Biriyani. Hence, this application has been filed for an order of interim injunction.



O.A.No.214 of 2024

WEB COPY

3. After filing of this application, this Court granted injunction vide order dated 19.03.2024. However, on 24.06.2024, it was submitted by the applicant that the respondent is still using the brand name “Mohammed Anifa Biriyani”. In this regard, he has also filed a contempt petition against the respondent in Cont.P.No.1442 of 2024. Hence, this Court directed the respondent to file an affidavit as to whether he is running the shop under the name and style of “Mohammed Anifa Biriyani” or not. Accordingly, on 03.07.2024, the respondent filed an affidavit along with photographs stating that they are not using the brand name “Mohammed Anifa Biriyani” and the learned counsel for the applicant seeks time to get appropriate instructions with regard to the same.

4. Today, the learned counsel for the applicant would submit that as on today, the respondent had removed the registered Trade Mark of the applicant as in Mohammed Anifa Biriyani. Further, he would contend that though as on today, the respondent had removed the registered Trade Mark, they had not complied with the injunction order upon receipt of the copy of the said order.



O.A.No.214 of 2024

WEB COPY

5. Further, he would submit that now the dispute between the parties is with regard to the compensation payable by the respondent to the applicant for the usage of brand name of the applicant even after the termination of the Franchise Agreement and the present dispute is arbitrable in terms of Clause 11 of the said Agreement. Therefore, he requests this Court to appoint an Arbitrator to adjudicate the dispute between the parties.

6. The learned counsel for the respondent has also accepted the above submissions and requests this Court to appoint an Arbitrator.

7. Heard the learned counsel for the applicant and the respondent and also perused the materials available on record.

8. In the present case, it is clear that the dispute between the parties is arising out of the Franchise Agreement dated 05.12.2021. Upon perusal of the said Agreement, it is clear that the dispute among the parties shall be resolved by virtue of Arbitration as per the Clause 11 of the said Agreement, which reads as follows:



O.A.No.214 of 2024

WEB COPY

“11) RESOLUTION OF DISPUTES

Any dispute, claim or difference that may arise between the parties here to in regard to this agreement the carrying out of its terms and conditions and/or the interpretation there of in any way whatsoever, shall be referred to the arbitration of a sole arbitrator, who shall be appointed by the hon'ble chief justice by filling a petition under section 11 (5) of the arbitration and conciliation act, 1996 the venue of arbitration shall be at Chennai.

The award of arbitral tribunal shall be final and binding on both the parties. The arbitration shall be governed by the provisions of the arbitration and conciliation act 1996 or its statutory modification in force for the time being.”

9. Considering the submissions made by both the learned counsel and also in view of the fact that the dispute between the applicant and the respondent squarely falls within the purview of Clause 11 of the Franchise Agreement dated 05.12.2021, though the present original application was filed under Section 9, considering the request made by both the learned counsel and since this Court is also dealing with the Section 11 jurisdiction,



O.A.No.214 of 2024

this Court is inclined to appoint an Arbitrator to adjudicate the disputes between the parties.

10. Accordingly, this Court feels it appropriate to pass the following order:

i) **Mr.Naveen Kumar Murthi, Advocate, residing at No.S2, 337 Linghi Chetty Street, Chennai – 600 001, (Mobile No.9884840424),** is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the applicant shall bear the entire remuneration and other expenses and thereafter,



WEB COPY



O.A.No.214 of 2024

the applicant can recover the same directly from the respondent and vice versa.

iv) There is no need for any further extension of interim injunction since the respondent had removed the brand name of the applicant. The parties shall approach the learned Arbitrator for any further reliefs.

v) The parties are granted liberty to raise all their contentions before the learned Arbitrator.

vii) If any notice was already issued, the date of commencement of Arbitral proceedings would be the date of issuance of the said notice.

viii) If no notice was issued, since this Court has appointed Arbitrator in Section 9 proceedings, by invoking jurisdiction under Section 11, the commencement of Arbitral proceedings would be the date of passing of the present order.

11. With the above directions, this application is disposed of. No cost.

18.07.2024

nsa

6/8



WEB COPY



O.A.No.214 of 2024



WEB COPY



O.A.No.214 of 2024

KRISHNAN RAMASAMY, J.,

nsa

O.A.No.214 of 2024

18.07.2024
(1/2)