



O.A.Nos.959 to 961 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2025

Delivered on : 17.02.2025

CORAM

THE HON'BLE MR.JUSTICE P.B.BALAJI

O.A. Nos. 959, 960 and 961 of 2024

and

Application Nos. 155 and 156 of 2025

Young Franchise Holdings LLP

Represented by its Partner, Ramesh Krishnan

No. 12/6, Appu street, 1st lane,

Mylapore,

Chennai- 600 004.

... Applicant in all O.As

Vs.

1. M/s Food Cult

Represented by its Sole Proprietor, Mr. Ponsurya R

4/225, 1st street, Muthammal Colony,

Thoothukudi- 628 002.

2. SDrive Service Private Limited

Represented by its Managing Director, Mr. Saravanan

Old No. 33, New No. 10

Rajiv Gandhi Salai, OMR road,

Navalur, Chennai- 600 130.

... Respondents in all O.As



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PRAYER in O.A.No.959 of 2024 : This Application filed under Order XIV Rule of OS Rules, read with Section 9 (ii) (d) of the Arbitration and Conciliation Act, 1996, to pass an interim injunction restraining the first respondent from directly or indirectly using or exploiting in any manner whatsoever, the brand of Burgerman including any part thereof or derivatives therefrom pending the arbitral proceedings.

PRAYER in O.A.No.960 of 2024 : This Application filed under Order XIV Rule of OS Rules, read with Section 9 (ii) (d) of the Arbitration and Conciliation Act, 1996, to pass an order of interim injunction restraining the first respondent from directly or indirectly, soliciting and supplier, distributor or agent of the Applicant in connection with any business or operations of the first respondent.

PRAYER in O.A.No.961 of 2024 : This Application filed under Order XIV Rule of OS Rules, read with Section 9 (ii) (d) of the Arbitration and Conciliation Act, 1996, to pass an order of interim injunction restraining the first respondent from directly or indirectly developing, managing, establishing or otherwise operating any business that is similar to the business of processing and selling food products, more specifically, burgers, pizzas, ice creams and milk shakes, from out of the premises more specifically set out in the schedule hereto.



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(In all O.As)

For Applicant : Mr.P.M.N.Bhagavath Krishnan

For Respondent : Mrs.Uma Maheswari for R1

COMMON ORDER

The three Original Applications have been filed under section 9 of the Arbitration and Conciliation Act, 1996 for the following reliefs:

2. O.A. No. 960 of 2024 for an interim injunction to restrain the First Respondent from directly or indirectly, soliciting any supplier, distributor or agent of the Applicant in connection with any business or operations of the 1st Respondent.

3. O.A. No. 961 of 2024 – Seeking an interim injunction to restrain the First Respondent from directly or indirectly, developing, managing, establishing or otherwise operating any business that is similar to the business of processing and selling of food products, more specifically burgers, pizzas, ice creams and milkshakes, from out of the premises, more



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specifically set out in the schedule to the Judge's Summons.

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4. O.A. No. 959 of 2024 - Interim injunction to restrain the First Respondent from directly or indirectly, using or exploiting in any manner whatsoever, the brand 'BurgerMan', including any part thereof or derivatives therefrom.

5. All these interim prayers under Section 9 have been sought to protect the Applicant's rights pending the arbitral proceedings.

6. When the above applications were moved before me for the first time on 13.12.2024, I granted an interim injunction insofar as application O.A. Nos. 959 and 961 of 2024 alone while ordering only notice in O.A. No. 960 of 2024. Subsequent to service of notice on the Respondents, the First Respondent has come up with the applications namely, A. No. 155 of 2025 and A. 156 of 2025, for vacating the interim injunction granted by me in O.A. Nos. 959 and 961 of 2024 respectively, by order dated 13.12.2024.

7. For the sake of convenience, the Parties are described as per their



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rank in the original applications.

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8. I have heard Mr. Bhagavath Krishnan, the Counsel for the Applicant in O.A. Nos. 959 to 961 of 2024 and Respondent in Arbitration Applications Nos. 155 and 156 of 2025 and Mrs. Umamaheswari, Counsel for the First Respondent in the O.A.'s and Applicant in Arbitration Application Nos.155 and 156 of 2025. I have also gone through the documents filed in support of the contentions put forth by the parties, by way of typed set of papers and also the decision on which reliance is placed on by the Counsel for the 1st Respondent.

9. The Counsel for the Applicant, Mr. Bhagavath Krishnan took me through the Franchise Agreement dated 15.12.2022 between the Applicant and the First Respondent. Inviting my attention to the lock-in period agreed upon between the Parties under the said Franchise Agreement, the termination clause as well as the non-compete clause, he would contend that notwithstanding the lock-in period, the Applicant had a right to terminate the agreement in the event of any material and persistent breach or default in performance of the First Respondent's obligations under the Agreement,



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when such defaults that are breached are not rectified within 30 days after written notice of such breach. In this connection, he would also take me through various emails exchanged between the parties to fortify his contentions that the First Respondent, despite being put on notice about several shortcomings and non-compliance of his obligations, had not taken any redressal measures and therefore, the Applicant was justified in terminating the Franchise Agreement, even during the lock-in period.

10. The learned Counsel for the Applicant would next rely on clause 21 which is the non-compete clause. It is agreed between the Applicant and the First Respondent that both during the term of Agreement and also for 3 years after termination, the First Respondent shall not own, develop, manage, establish or operate or cause to be operated or consult in or be involved in whether directly or indirectly, in a business that is similar to the franchise business and shall not solicit any supplier/ distribute/ agent of the Applicant, to the detriment of the franchise business. Referring to the said non-compete clause, the learned Counsel for the Applicant would bring to my notice that the First Respondent continues to retain the premises along



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with the branding and name board 'BurgerMan', which is the Applicant's brand and also carrying on only food and beverage business from the same premises. Therefore, according to the learned Counsel for the Applicant, the conduct of the First Respondent was in clear breach and violation of the terms of the Franchise Agreement, leave alone causing confusion amongst the general public and seriously prejudicing the rights of the Applicant. The Learned Counsel would therefore pray for an interim injunction being granted in all three original applications as prayed for.

11. Per contra, the learned Counsel for the First Respondent Mrs. Umamaheswari would deal with the three Original Applications separately. Insofar as the injunction pertaining to use of the brand name 'BurgerMan' belonging to the Applicant, she would submit that the name board that has been complained of the Applicant has already been removed and the First Respondent does not intend to use the brand name 'BurgerMan' in any manner. I also find from the common counter affidavit of the First Respondent that the First Respondent has categorically stated on oath that he is no longer continuing to carry on any operations under the name and



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style of 'BurgerMan' and that the claim of the Applicant that the First Respondent is using the Applicant's brand name is false. At this juncture, the Counsel for the Applicant also fairly admitted that the board has in fact been pulled down subsequent to the date of interim order being granted by me and the Applicant has no objection for recording the undertaking / statement of the First Respondent and close Application No. 959 of 2024.

12. With regard to the injunction application seeking to restrain the First Respondent from soliciting or in any manner engaging or dealing with the suppliers of the Applicant also, the Learned Counsel for the first respondent would invite my attention to the averments in paragraph 21 of the common counter affidavit of the First Respondent wherein it is stated that the First Respondent is not reaching out to the vendors and suppliers of the Applicant in connection with materials that they supply exclusively for the Applicant's team. In view of the said categorical statement in the counter affidavit, I do not see any useful purpose in keeping O.A. No. 960 of 2024 pending any further. The statement of the First Respondent can be recorded and the application can be closed as the purpose of the application



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has been served.

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13. Coming to O.A. No. 961 of 2024, the Applicant seeks an interim injunction to restrain the First Respondent from either directly or indirectly doing any business that is similar to the business of the Applicant, more specifically, processing and selling of burgers, pizzas, ice creams and milkshakes from out of the premises where the franchise business was being carried on. Though the Counsel for the First Respondent made elaborate submission touching upon the merits of the rival contentions raised in the affidavit in support of the original applications and well as the counter affidavit and the affidavits in support of the vacate injunction petition, I do not deem it necessary to delve into the said issues which are to be adjudicated by the Arbitral Tribunal after the parties lead evidence, oral and documentary. The questions like whether the termination was proper and whether the Applicant or the First Respondent had breached the terms and conditions of the Franchise Agreement are all going to be the subject matter of the arbitration proceedings. Presently, I am only concerned with the Section 9 applications where the applicant seeks interim protection, pending disposal of the arbitration proceedings.



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14. Insofar, as the O.A. Nos. 959 and 960 of 2024, I have already recorded the subsequent events and the averments in the counter affidavit. In view of the same, there is no requirement to deal with these two applications in any greater detail. However, insofar as the 3rd application, the applicant is seeking to enforce the non-compete clause. For easy reference, the non-compete clause is extracted hereunder :-

“During the Term of this Agreement and for 3 (Three) years after termination, the Franchisee shall not own, develop, manage, establish or operate or cause to be operated or consult in or be involved in, whether directly or indirectly, in a business that is similar to the Franchise Business and shall not solicit any supplier/ distributor/ agent of the Franchisor to the detriment of the Franchise Business”

15. It is clear from a reading of the above clause that the First Respondent has agreed that both during the term of the agreement, which is for a period of 100 months and additionally for a period of 3 years from the date of termination of the agreement, the First Respondent would not



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establish, develop, own manage, operate, consult or be involved, directly or indirectly, in a business that is similar to the franchise business. The

Applicant merely relies on the said clause to press the prayer for injunction in this regard. However, despite agreeing to such a clause, the First Respondent's contentions is that there cannot be such an omnibus restraint sought for against the First Respondent. The learned counsel for the First Respondent would also place reliance on the decision of the Honourable Division Bench of the Gujarat High Court in ***Kanhai Foods Limited vs. A AND HP BAKES***. In the said decision, the Hon'ble Division Bench in similar circumstances, deciding a Section 9 application, held that any restraint order prohibiting the respondents from carrying out any activity at the franchise premises would have the effect of granting a final relief apart from bringing the business of the Respondent to a complete halt and therefore, such relief cannot be granted as an interim measure under Section 9 of the Arbitration and Conciliation Act, 1996. Drawing a parallel to the said judgement, the learned counsel for the 1st Respondent, Mrs. Umamaheswari would contend that in the case before the Gujarat High Court, the business that was subject matter of the dispute was a bakery,



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whereas in the present case it is burgers, pizzas and milkshakes and in all other respects, the fact situation arising before the Gujarat High Court was identical to the facts of the present case. The learned counsel for the First Respondent, therefore prays for dismissal of O.A. No 961 of 2024, by allowing Arbitration Application 156 of 2025.

16. I have carefully considered the submission advanced by the learned Counsel on either side.

17. The only two applications that now survive for consideration, post the discussion made herein above, are O.A. No. 961 of 2024 and Arbitration Application No.156 of 2025. The Applicant presses into service the non-compete clause agreed upon under the Franchise Agreement dated 15.12.2022. The First Respondent does not deny the said Franchise Agreement or its contents. Therefore, the only question that falls for consideration is whether the non-compete clause agreed upon by the parties is enforceable or not. If, the non-compete clause is binding on the First Respondent, then there is no difficulty with regard to the entitlement of the



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Applicant for an interim injunction. However, if I hold otherwise, then the

Applicant would not be entitled to the continuance of the interim injunction.

Straightaway, I am compelled to advert my attention and focus to Section 27 of the Indian Contract Act, 1872. The said section is usefully extracted hereinunder;

“Section 27. Agreement in restraint of trade void.-

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.”

18. The franchise agreement is nothing but a contract between the Applicant and the First Respondent, setting out various terms and conditions of doing business together. The said Franchise Agreement is a contract not only amenable to, but also governed by the provisions of the Indian Contract Act, 1872. Therefore, notwithstanding what the parties have agreed to, when the whole or part of such an agreement between two parties violates the mandate of Section 27 of the Indian Contract Act, 1872, then such whole or part of the agreement is void. Testing the non-compete



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clause, in the light of Section 27 of the Indian Contract Act, 1872, I am able to see that the said Clause, on the face of it, violates the purport, letter and spirit of Section 27 of the Indian Contract Act, 1872.

19. In fact this Court in *UCMAS Mental Arithmetic vs Akademi Sempoa & Mental*, reported in 2014 (4) CTC 548, in a matter relating to a clause in an agreement which contemplated the defendant therein not to operate any other similar business, even under any other name and style, applied the doctrine of restraint of trade which is embodied in Section 27 of the Indian Contract Act, 1872 and held that there cannot be any restriction refraining a person after termination of Contract as the same is void.

20. In fact this Hon'ble Court relied on the decisions of the Hon'ble Supreme Court in

1. *Niranjan Shankar Golikari vs. Century Spinning and Manufacturing Co. Ltd.*, reported in (1967) 2 SCR 378

2. *Superintendence Company of India (P) Ltd. vs. Krishan Murgai*, reported in (1981) 2 Supreme Court Cases 246



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3. *Gujarat Bottling Co. Ltd. and Others vs. Coca Cola Co. and*

Others, reported in (1995) 5 Supreme Court Cases 545

4. *Percept D'Mark (India) (P) Ltd. vs. Zaheer Khan and Another*,

reported in (2006) 4 SCC 227,

where the Hon'ble Supreme Court, in no uncertain terms held that there cannot be any injunction issued by a Court, in restraint of trade. Applying the above ratio, considering that the courts have consistently held that such restraint on trade can be enforced only subsisting the contract and not post termination, in the present case as well the contract having been admittedly terminated, the Applicant cannot seek to enforce the non-compete clause.

21. In view of the above discussion, the Applicant cannot enforce the non-compete clause even though it has found its way in the Franchise Agreement between the Applicant and the First Respondent. Also, in view of the categorical positive averments made in the counter affidavit of the First Respondent that the First Respondent does not want anything to do with the Applicant or the Applicant's brand name 'BurgerMan' or even its



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suppliers and dealers, the interests of the Applicant are sufficiently protected. Therefore, I am unable to countenance the submission of the learned Counsel for the Applicant seeking for the interim injunction being made absolute. The arbitration proceedings are yet to commence and the Applicant is always at liberty to seek appropriate relief including damages suffered, if any, as a result of the acts and omissions of the First Respondent. At this preliminary stage of consideration of the Section 9 application, I do not find any case made out for granting the interim relief sought for by the Applicant.

22. In the result, the following order is passed:

(i) Recording the statement of the First Respondent in the common counter affidavit dated 23.01.2025 that the First Respondent has already stopped using the brand 'BurgerMan', the application O.A. No. 959 of 2024 and Arbitration Application No.155 of 2025 are closed.

(ii) Recording the statement of the First Respondent in the common counter affidavit, dated 23.01.2025 that the First Respondent is not reaching out to the vendors and suppliers of the Applicant relating to exclusive supply made to the Applicant, O.A. No. 960 of 2024 is closed.



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WEB COPY (iii) Arbitration Application No. 156 of 2025 is allowed and consequently, the injunction application in O.A. No. 961 of 2024 is dismissed.

(iv) There shall be no order as to costs.

17.02.2025

Index : Yes/No

Internet: Yes

NCC: Yes/No

To

1. The Sole Proprietor

Ponsurya R

M/s Food Cult

4/225, 1st street, Muthammal Colony,

Thoothukudi- 628 002.

2. The Managing Director,

Saravanan

SDrive Service Private Limited

Old No. 33, New No. 10

Rajiv Gandhi Salai, OMR road,

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Navalur, Chennai- 600 130.



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P.B.BALAJI, J.

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Pre-delivery order made in
O.A.Nos.959, 960 and 961 of 2024
Application Nos.155 and 156 of 2025

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