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

+ **CS(COMM) 5/2018, I.A. 437/2018, I.A. 1608/2018 & I.A. 1610/2018**

INDOCAN FACILITATORS INC. & ANRPlaintiffs

Through: Mr. Abhishek Saket, Mr. Vikrant
Rohilla, Mr. Manish Madhukar, Mr.
Abhigyan and Ms. Reya Paul, Advs.

versus

**ARCHWAY VENTURES (INTERNATIONAL) PVT.
LTD. & ORS**

.....Defendants

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

03.12.2025

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1. The present suit has been filed seeking for permanent injunction in respect of the infringement of the registered trade mark and other ancillary reliefs.

Case set up in the plaint

2. Plaintiff No. 3, Menchie's Group Inc. (MGI) a company duly incorporated in the United States of America, is the registered proprietor of



the mark 'MENCHIE'S', 'FROYO', 'MENCHIE'S', 'FROYO', under Class 43 and is the Master Licensor having granted the Master Franchise for exclusive usage of the said mark in India to Plaintiffs No. 1 and Plaintiff No.2 pursuant to an assignment deed dated 13.01.2012.



3. It is stated that MENCHIE's is the leading retailer of self-serve frozen yoghurt in the USA and has a worldwide presence with operations in 540 locations in more than 20 countries.
4. It is stated that the defendants approached the plaintiff no. 1 in February 2015, expressing their interest in opening MENCHIE'S outlets under the said trademark. Consequently, Plaintiff no.1 granted a sub-franchise to Defendant no.1 to operate two (2) outlets, one in Pune and the other in Mumbai, with limited and revocable rights and licence to use the trade mark MENCHIE'S and use of various other trademarks such as **MYSMILEAGE, WE MAKE YOU SMILE** and the associated logos.
5. It is stated that the defendants further pleaded to the plaintiff to grant additional rights for three (3) new MENCHIE'S outlets for Maharashtra and Goa. Consequently, a letter of intent dated 21.12.2015 was issued to the Defendants by the plaintiff no. 2.
6. It is submitted that the defendants, despite being fully cognizant of the terms and conditions of the sub-franchise agreement, repeatedly breached the same by delaying and, in certain instances, failing to remit the payments due to Plaintiff Nos. 1 and 2 towards royalties and other contractual obligations.
7. It is stated that in January 2016, the defendants commenced operation of a new MENCHIE'S outlet in Pune *without* authorisation and *without* executing the requisite contractual documents, thereby acting in blatant violation of the Sub-Franchise Agreement dated 01.05.2015.
8. In view of the defendants' breach of the agreement and their unauthorised use and operation of the MENCHIE'S outlet at Pune, the



plaintiffs issued a termination notice on 29.09.2017, thereby terminating the Sub-Franchise Agreement dated 01.05.2015.

9. However, even after the termination of the agreement, it was revealed that the defendants only rebranded their outlets from MENCHIE'S to **MYFROYOLAND** and also started using a similar trademark/ logo as that of the Plaintiffs.

10. It is stated that the Court vide ad-interim order dated 11.01.2018, which was confirmed on 21.05.2024, has already enjoined the defendant nos. 1 to 3 from using the impugned marks.

11. It is stated that vide order dated 21.05.2024, learned counsel for the plaintiffs stated that they have no objection in the event the defendants agree to the passing of a final decree in terms of the injunction order dated 11.01.2018. On the said date, learned counsel for the defendants sought time to obtain instructions in this regard and the matter was posted for 18.07.2024. The matter was adjourned again on 18.07.2024 to enable the defendant to seek instructions and listed for 24.09.2024.

12. It is further stated that however, there has been no appearance on behalf of the defendants since 24.09.2024. The defendants have not sought the vacation or modification of the aforesaid injunction order or defend these proceedings. Consequently, the defendants were proceeded ex parte by order dated 28.11.2025.

13. Learned counsel for the plaintiff reiterates his submission that the suit may be disposed of in terms of the injunction order dated 11.01.2018.

Court's findings

14. The plaintiff states that defendants have accepted the injunction order and have adopted a new trademark/tradename and changed the façade and



the interiors of its stores; and the plaintiff is not seeking any further directions against the defendants. It is stated that plaintiff is also not pressing for the relief of damages and legal costs.

15. Since the defendants have failed to take any requisite steps to contest the present suit despite having been afforded adequate opportunities and being bound by the ad-interim injunction order, their conduct demonstrates a clear lack of intent to defend the present proceedings. The defendants have also accepted the injunction order and adopted a different trademark/tradename as well as modified its interiors and façade, which are acceptable to the plaintiff.

16. The plaintiff has filed documents on record evidencing its proprietary



rights in its trademarks MENCHIE'S', 'FROYO', ' ',



, which have not been rebutted by the defendants.

17. It would be relevant to refer to the dicta of **Satya Infrastructure Ltd. & Ors. v. Satya Infra & Estates Pvt. Ltd.**¹, wherein the Co-ordinate Bench of this Court held that in matters where the defendant is proceeded ex parte, the Court, upon its satisfaction, can pass a decree for permanent injunction on the basis of the pleadings filed on affidavit. The relevant part of the order reads as under: -

“4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to

¹ 2013 SCC OnLine Del 508



lead ex parte evidence. The counsel for the plaintiff's states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction."

(emphasis supplied)

18. In view thereof, this Court finds no purpose in continuing the suit qua the defendant nos. 1 to 3. Accordingly, a decree of permanent injunction is hereby passed in terms of the injunction order dated 11.01.2018 in favour of the plaintiff and against defendant nos. 1 to 3. The remaining reliefs of damages and legal costs are disposed of as not pressed.

19. The registry is directed to draw up a decree in terms of this order, and the terms of the injunction order dated 11.01.2018 shall form a part of the decree.

20. It is stated that the suit qua defendant nos. 4 and 7 already stands disposed of vide order dated 12.03.2018.

21. Since the defendant nos. 5 and 6 are proforma parties, the suit also stands disposed of against them.

22. With the aforesaid directions, this suit, along with pending applications (if any), stands disposed of.



23. The suit qua remaining defendant no. 5 and 6, which are the proforma parties, also stand disposed of.
24. All future dates stand cancelled.
25. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of the order shall be insisted upon by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 3, 2025/Aj