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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision : 20.04.2026**

+ O.M.P.(I) (COMM.) 165/2026 & I.A. 10624/2026 (For Exemption)

GUJRAL RESTURANTS AND MANAGEMENT PVT LTD &
ANR.PetitionersThrough: Mr. Rishabh Sharma and Ms.
Ambica Sood, Advocates for
P-1.

versus

SKY HIGH & ANR.Respondents

Through: Mr. Ishan Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

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JUDGEMENT (ORAL)

1. The present Petition has been filed under Section 9 of the **Arbitration and Conciliation Act, 1996¹**, seeking the following reliefs:

“.....

- i. Pass an Ex-parte Order of the Injunction against the Respondents, its principals, partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies, assigns, etc. be restrained by an Order of injunction from: Advertising, selling, offering for sale, marketing, promoting any restaurant and catering business or in any other manner whatsoever, using the Impugned Marks ‘MOTI MAHAL’, ‘MOTI MAHAL DELUX’ or any other mark which is deceptively and/or confusingly similar and/or identical/virtually identical to the Petitioner’ earlier, well – known and

¹ A&C Act



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registered trademarks 'MOTI MAHAL', 'MOTI MAHAL' formative marks or any of the trademarks or in any other manner whatsoever, which would amount to infringing the Petitioner's earlier well-known registered trademarks and passing off;

- ii. The Respondent No. 1, its principals, partners, officers, employees, agents, distributors, suppliers, affiliates, subsidiaries, franchisees, licensees, representatives, group companies, assigns, etc. be ordered by a decree of mandatory injunction;
- iii. Cost of the Petition be Awarded in favour of the Petitioner.
- iv. Pass any other Order as it may deemed fit in the facts and the circumstances of the present case."

2. Learned counsel Mr. Ishan Jain, who enters appearance on behalf of the Respondents on advance notice, objects to the grant of any relief as sought for, on the ground that a suit came to be filed by the Petitioners herein and which was later withdrawn.

3. He submits that since the said suit came to be withdrawn without any liberty being granted to prefer any further proceedings, the present Petition is barred under the law. In this regard, he relies upon the judgment of the Hon'ble Supreme Court in *Bakhtawar Singh v. Sada Kaur*² and in particular Paragraph 8 thereof, which reads as under:

"8. The contention of the learned counsel for the appellants is that since the plaintiffs had withdrawn their earlier suit (Civil Suit No. 661 of 1964) with permission to file a fresh suit on the same cause of action in accordance with the provisions contained in clause (3) of Rule 1 of Order 23 of the Code of Civil Procedure (hereinafter 'the Code') and, therefore, the plaintiffs were entitled to exclude the time spent in prosecuting the said earlier suit as provided under Section 14 of the Limitation Act, 1963 (hereinafter 'the Act'). The question, therefore, that arises for our consideration is whether the plaintiffs-appellants were permitted to withdraw the suit in accordance with the provisions contained in clause (3) of Order 23

² (1996) 11 SCC 167



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Rule 1 of the Code and whether in the facts and circumstances of the present case the plaintiffs-appellants are entitled for exclusion of the time under Section 14 of the Act. Clause (3) of Order 23 Rule 1 of the Code contemplates that where the court is satisfied (a) that a suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of the suit or part of a claim, it may on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of subject-matter of such suit or such part of the claim. In the present case all the courts below including the High Court concurrently found that the plaintiffs/appellants failed to produce any evidence to show that the permission to withdraw the suit was given on the ground that the suit was bound to fail by reason of some formal defect or there were sufficient grounds for allowing the plaintiffs to institute a fresh suit in respect of the same subject-matter. Not only this, the plaintiffs had not even produced the application which is said to have been filed for withdrawal of the earlier suit with permission to file a fresh suit on the same cause of action to show as to what was the formal defect in the earlier suit by reason of which it was sought to be withdrawn. However, the order dated 20-5-1971 passed by the civil court was on record which did not indicate as to what was the formal defect in the suit by reason of which the permission to withdraw the same was accorded. In these facts and circumstances no case for fresh institution of suit on the same cause of action and for the same relief after the withdrawal of the earlier suit was made out by the plaintiffs/appellants in accordance with the provisions of clause (3) of Order 23 Rule 1 of the Code.”

4. A perusal of ***Bakhtawar Singh*** (*supra*) would indicate that the Judgement relates to the filing of a fresh suit after withdrawal of a previous suit, *albeit* the same does not pertain to an arbitration proceeding being instituted.

5. This Court is of the considered opinion that in view of the fact that the relationship as between the parties, which is governed by a **Franchise Agreement dated 23.11.2020³**, contains an arbitration clause, the present Petition is clearly maintainable. The relevant



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arbitration clause, being Clause XXVII of the Agreement, reads as under:

“XXVII) ARBITRATION

In the event of any dispute or difference between the parties hereto, whether arising during the currency or after the completion or abandonment of this agreement, or after the determination thereof (whether for breach or for any other reason) in regard to any matter of thing of whatsoever nature arising out of this agreement or in connection therewith, then either party shall give to the other notice in writing of such dispute or shall give to the other notice in writing of such dispute or difference and the same shall be referred to an Arbitrator mutually consented by both parties appointed by the Franchisor & Franchisee only, the venue of the arbitration shall be Delhi, India in accordance with the Arbitration & Conciliation Act 1996 or any statutory modification or amendment thereof. Subject to the foregoing parties submit to the Jurisdiction of Courts at Delhi only. The arbitration proceedings shall be conducted in the English Language. The award of the respective arbitration shall be binding on all parties.

That any dispute or differences arising out of or in relation to this Agreement shall be at the first instance settled expeditiously and fairly by the chief executives / authorized representatives of the concerned Parties hereto. In the event of the chief executives / authorized representatives of the concerned Parties not being able to resolve the disputes / differences amicably.”

6. Upon a pointed query being put to learned counsel appearing on behalf of the parties, they submit that they have no objection to the disputes as raised herein being referred to arbitration by a Sole Arbitrator.

7. Since the parties have mutually consented to the adjudication of their disputes by way of Arbitration, this Court is of the view that the commencement of arbitral proceedings to adjudicate the disputes between the parties should not be unduly delayed. Accordingly, in the

³ Agreement



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peculiar facts of the present case, the requirement of Section 21 notice and initiation of separate proceedings under Section 11 of the A&C Act are dispensed with, with the consent of the parties.

8. In view thereof, this Court is of the view that the matter may be referred to arbitration by a Sole Arbitrator for the purpose of the adjudication of the disputes between the parties.

9. Material on record reflects that the valuation of the subject matter of the disputes is stated to be approximately Rs. 2,00,05,000/-.

10. Accordingly, this Court hereby requests **Hon'ble Mr. Justice (Retd.) Dr. Bharat Bhushan Prasson (Former Judge of Punjab and Haryana High Court) (Mobile No. [REDACTED])**, to enter upon the reference and adjudicate the disputes *inter se* the parties.

11. The learned Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the A&C Act within a week of entering the reference.

12. The Registry is directed to forward a copy of this order to the learned Arbitrator through all permissible modes, including electronic means..

13. The learned Arbitrator shall be entitled to a fee in accordance with the Fourth Schedule of the A&C Act or as may otherwise be agreed to between the parties and the learned Arbitrator.

14. The parties shall share the learned Arbitrator's fee and arbitral costs equally.

15. All rights and contentions of the parties are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance



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with law.

16. Accordingly, the present Petition under Section 9 of the A&C Act shall be treated as an Application under Section 17 of the A&C Act, and appropriate directions may be passed by the learned Arbitrator after entering upon the reference.

17. The learned Arbitral Tribunal is requested to accord their consideration to the Section 17 Application as expeditiously as possible.

18. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy.

19. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
APRIL 20, 2026/tk/va/kv