

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27<sup>TH</sup> DAY OF JULY 2021

BEFORE

**THE HON'BLE MR.JUSTICE ARAVIND KUMAR**

**AND**

**THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR**

**COMMERCIAL APPEAL NO.23/2021**

**BETWEEN:**

M/S SAYESH ENTERPRISES  
HAVING ITS OFFICE AT  
JYOTHI SACHDEV IYER  
53/1/2, HAZRA ROAD  
FLAT 1C, SHIVANGAM BUILDING  
KOLKATA - 700 019  
REP. BY ITS SOLE PROPRIETOR  
MRS. JYOTI SACHDEV IYER

PRESENTLY RESIDING AT  
MRS. JYOTI SACHDEV IYER  
AGED ABOUT 44 YEARS  
B-22, VASANTH VIHAR  
LANE 8, VASANT MARG  
NEW DELHI - 57.

...APPELLANT

(BY SRI. ADINATHA NARDE, ADVOCATE)

**AND:**

M/S EMERALD VENTURES  
HAVING ITS OFFICE AT NO.29  
SHANTI NILAYA, ULSOOR ROAD  
BENGALURU - 560 042  
REP. BY ITS SOLE PROPRIETOR  
MRS. ANJUM IMTIAZ.

...RESPONDENT

(RESPONDENT SERVED AND UNREPRESENTED)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1)(A) OF THE COMMERCIAL COURT ACT 2015 PRAYING TO SET ASIDE THE ORDER PASSED BY THE HON'BLE TRIAL COURT DATED 08.06.2020 PASSED ON I.A.NO.1, IN COM O.S.NO. 8060/2018 ON THE FILE FC LXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU CITY (CCH-84) PRODUCED AS ANNEXURE-A.

THIS COMMERCIAL APPEAL COMING ON FOR ADMISSION THIS DAY, THE **ARAVIND KUMAR J.**, COURT DELIVERED THE FOLLOWING:

### **JUDGMENT**

This is a plaintiff's appeal calling in question the order dated 08.06.2021 passed in Com.O.S. No.8060/2018 whereunder interlocutory application filed under Order 39 Rule 1 and 2 CPC seeking an ad interim order of temporary injunction to restrain the defendant, its agents, representatives, assignees or anybody claiming through or under them from violating non compete Clause 20.3 as per the Franchise Agreement dated 14.10.2017 by selling the products directly or indirectly in any manner or capacity whatsoever and compete with the franchise business, which is the subject matter of agreement.

2. Plaintiff herein has filed a suit claiming damages for a sum of Rs.3,18,93,727/- with current and future interest @ 15% from the date of filing of suit till date of realization; to restrain the defendant or its agents, representatives from violating non compete Clause 20.3 of Franchise Agreement dated 14.10.2017. It is contended in the suit that defendant had approached the plaintiff by exhibiting its interest in promoting the designer clothes of the plaintiff in the market and as such a Franchise Agreement was entered between them on 14.10.2017 and on the understanding arrived between parties that they shall act in accordance with the standards of trademark "Jyoti Sachdev Iyer", a retail premises located at Ulsoor Road, Bangalore was taken on rent and interior design was done by the plaintiff's sister without charging for the same; it is further contended that defendant agreed to the terms and conditions mentioned in the Franchise Agreement, which was for a period of three (3) years; alleging that defendant has not conducted the business in accordance with agreement and has violated majority of

the clauses without a second thought and despite giving several opportunities to the defendant to set-right its mistakes, defendant did not comply with the terms of the agreement but had issued a termination notice dated 01.06.2018 terminating the Franchise Agreement and as such alleging violation of Clause 19.3, a suit came to be filed by the plaintiff. It was further contended that defendant is liable to pay a sum of Rs.4,00,000/- towards payment held by the defendant and apart from sales receivable, a sum of Rs.1,89,96,000/- is payable as compensation for unexpired period of two (2) years four (4) months in terms of Clause 20.5 and in-toto a sum of Rs.3,18,93,727/- is payable by the defendant to plaintiff towards settlement of account in lieu of termination made by the defendant including damages. It is further contended that defendant had continued to violate Clause 20.3 under which defendant had agreed not to carry on business of similar nature or in any manner whatsoever similar to that of plaintiff for a period of two (2) years on completion of period prescribed under Franchise Agreement and yet

defendant had continued to brazenly violate the said clause. Hence, permanent injunction was sought for.

3. In aid of main relief, as already noticed hereinabove, an interlocutory application under Order 39 Rule 1 and 2 CPC was filed for grant of injunction. Said application was resisted to by the defendant by filing objections. Learned trial Judge after considering the rival contentions and on perusal of pleadings has arrived at a conclusion that though Clause 20.3 of the Franchise Agreement contains a non compete clause, on the premise that negative covenant of the agreement operates beyond the term of contract held as void and not permissible by referring to Section 27 of the Contract Act, rejected the said application. Hence, this appeal.

4. We have heard Smt. Revathi Adinatha Narde, learned counsel appearing on behalf of appellant. It is her contention that defendant has not only brazenly violated the non compete clause 20.3 of the Franchise Agreement, but has also violated the exparte order of temporary injunction granted and as such an

application under Order 39 Rule 2A CPC has been filed against defendant. She further contends that trial court committed a serious error in rejecting the said application, in as much as, non compete Clause 20.3 of Franchise Agreement is enforceable against the defendant whereunder she has clearly agreed that she would not carry on similar business as that of the plaintiff even after a period of two (2) years even after expiration of agreement period and as such defendant is required to be restrained from carrying on the business till 14.10.2022.

5. Having heard the learned Advocate appearing for appellant and on perusal of pleadings as laid before trial judge and order under challenge in this appeal, it requires to be noticed that for grant of temporary injunction the plaintiff has to necessarily establish three (3) ingredients namely, prima facie case, balance of convenience and irreparable loss and injury being caused in the event of temporary injunction being refused.

6. It is trite law that where the plaintiff can be suitably compensated in terms of money no order of temporary injunction would be granted. In the instant case, as noticed hereinabove, learned trial Judge has opined that Clause 20.3, which is a non compete clause which has been pressed into service by the plaintiff seeking for a order of restraint against defendant, is hit by Section 27 of the Contract Act namely, a restrictive covenant extending beyond the term of the contract is void and unenforceable. Without expressing any opinion in that regard for a moment, when the case of plaintiff is examined in the background of Clause 20.3 of the Franchise Agreement dated 14.10.2017, it would clearly indicate that defendant would not be entitled to carry on similar business for a period of two (2) years i.e., on the expiry of agreement or termination of the agreement. In the instant case, even according to plaintiff the defendant has terminated the Franchise Agreement dated 14.10.2017 by issuance of termination notice dated 01.06.2018. Thus, non compete clause assuming for a moment is enforceable against the defendant

would only be for a period of two (2) years i.e., upto 01.06.2020. Beyond the said period plaintiff would not be entitled to seek for an order of temporary injunction to restrain the defendant from carrying on the business similar to the business carried on by the plaintiff. In other words, prayer of the plaintiff has got spent itself.

7. As such we are of the considered view that trial court was justified in arriving at a conclusion that there is no prima facie case in favour of plaintiff. That apart, by refusing to grant order of temporary injunction trial court has also taken note of the fact that claim of plaintiff is for award of damages and if at all if the defendant has sold any product of the plaintiff during the operation of exparte order of temporary injunction, it would be always open for the plaintiff to pursue their claim which is said to have been already initiated in the pending suit and we are not expressing any opinion in this regard as matter is still at large before the trial court and particularly in the background of plaintiff having undisputedly filed an application under Order 39 Rule 2A CPC and same is pending. Hence, we are of the



considered view that appeal is not required to be entertained.

For the reasons aforestated, we proceed to pass the following:

ORDER

- (i) Appeal is dismissed.
- (ii) Order dated 08.06.2020 passed on I.A.No.1 in Com.O.S.No.8060/2018 by LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru City (CCH-84) (Annexure-A) is affirmed subject to observation made hereinabove.
- (iii) No order as to costs.

Pending applications, if any, stands consigned to records.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

DR