

Vidta Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO. 5055 OF 2020  
IN  
ARBITRATION PETITION (L) NO. 426 OF 2020**

Jyotsana Chauhan, wife of Anand Rana,  
Proprietor of M/s. Arnav Enterprises ... **Applicant**  
**in the matter between**  
Iosis Spa & Wellness Pvt. Ltd. ... **Petitioner**  
**Vs.**  
Arnav Enterprises ... **Respondent**

Mr. Yashab Hussain Rizvi for the applicant/respondent.  
Ms. Fatima Barodawala i/b. Mr. Uttam S. Rane for the petitioner.

**CORAM : G.S.KULKARNI, J.**  
**DATE : 26 October 2020**  
**(through Video Conferencing)**

**P.C.**

Heard Mr. Rizvi, learned counsel for the applicant-respondent and Ms. Fatima Barodawala, learned counsel for the petitioner. Parties are referred as they stand in the original proceedings.

2. This Interim Application has been filed on behalf of the respondent praying for modification of the order dated 30<sup>th</sup> July, 2020 passed by this Court (Coram : G.S. Kulkarni, J.). The prayers as made in the application are required to be noted, which reads thus:

- “(a) the order dated 30.07.2020 be modified to the extent that in paragraph 8 of the said order dated 30.07.2020, the prayer at clause (a) of the Interim relief granted to the extent “(a) That pending the commencement of the arbitration proceedings, the Hon’ble Court may be pleased to restrain the respondent from operating the centre in the name of IOSIS” deleting the words “or any other name for a period of two years from 21 June 2020 i.e.

until 20 June 2022” for which act of kindness and equity, the deponent shall ever pray.

- (b) Pass any other or further orders as may be expedient and necessary protecting the rights of the respondent.”

3. Mr. Rizvi, learned counsel for the applicant, in support of the application, would again argue that the Franchise Agreement dated 31<sup>st</sup> March, 2019 is a bogus agreement and it was only the Letter of Intent dated 5<sup>th</sup> March, 2018 which was acted upon. He has contended that a FIR is lodged by the respondent on 19<sup>th</sup> June, 2020 complaining that the Franchise Agreement is a fabricated document. He next contends that there are also irregularities on this document *inter alia* in regard to the stamping, hence the document is required to be presumed and be held as a bogus and fabricated document. He submits that the ad-interim order dated 30<sup>th</sup> July, 2020 passed by this Court in terms of prayers (a) and (b) of the petition is causing a prejudice to the respondent inasmuch as it restrains the respondent from carrying out business “in any other name for a period of two years from 21<sup>st</sup> June, 2020 i.e. until 20<sup>th</sup> June, 2022”. He submits that in these circumstances, the clauses in the agreement are not binding on the respondent, hence the said order passed by this Court needs to be modified, so that the respondent can conduct business in any other name.

4. On the other hand, Ms. Barodawala, learned counsel for the petitioner would contend that the Court had passed the ad-interim order dated 30<sup>th</sup> July,

2020 taking into consideration the documents on record and more particularly the franchise agreement. She has drawn my attention to the franchise agreement and the clauses which would take effect on termination of the agreement. Clause 16 provides for the “effect of termination”, the relevant sub-clauses therein are clauses (C) and (E), which reads thus:

- “(C) Refrain from operating or doing business under any name or in any manner that might lead to the inference that it is or was franchised with Franchisee or that it is operating a business as a Franchisee;
- (E) Cease and desist from taking up any business which will compete with or is likely to compete with the business of Franchisor directly or indirectly for the period of two years from the expiry or early termination of the present agreement. And if the Franchisee wants to start the same business after two years as mentioned herein then under such circumstances he can do so beyond the 5 km. radius from the Franchisor centre.”

5. Referring to these clauses, Ms. Barodawala has drawn my attention to the prayer clauses (a) and (b) of the petition to contend that the prayers as made by the petitioners are in consonance to what was agreed between the parties in the Franchise Agreement. Her contention although not relevant in the context of the present application is that despite the ad-interim order passed by this Court, the respondent was conducting business in the name of “Essence Wellness”, which was also completely contrary to the binding terms of the Franchise Agreement. She would submit that the application as filed on behalf of the respondent is totally misconceived and needs to be rejected.

6. Having heard the learned counsel for the parties, I am not persuaded to accept this application as made on behalf of the respondent so as to modify my

order dated 30<sup>th</sup> July, 2020 for more than one reason. At the outset, it is required to be noted that the said order is an ad-interim order on the Section 9 Application filed by the petitioner. It needs to be further observed that there was nothing on record on the date of the said order, that in law, the Court would be in a position to discard the Franchisee Agreement and/or the petitioner was prohibited from referring to this Agreement. The contention as urged on behalf of the respondent that the franchise agreement is a bogus agreement prima facie appears to be absolutely frail or a contention in desperation when tested on the materials on record. Mr. Rizvi's contention that the Franchise Agreement be held to be fabricated on the ground that a FIR was filed also is totally untenable. The respondent is not in a position to point out any tangible material consequent to the FIR for the Court to come to a prima facie conclusion that the document is really a fabricated or bogus document which ought not to be taken into consideration. The FIR also appears to be quite belated. Mr. Rizvi's contention on irregularity in regard to the document inter alia of it being insufficiently stamped is also without any substance considering the well settled position in law. Such objection could not have detained the Court to protect the interest of the petitioner leading to the order dated 30<sup>th</sup> July, 2020. It is also seen from paragraph 9 of the respondent's legal notice dated 21<sup>st</sup> June, 2020 addressed to the petitioner, that a vague statement is made in regard to some signatures being obtained on blank papers presumably to link these blank papers to the franchise agreement. Considering

the materials on record, *prima facie*, it is difficult to believe such statement and to the extent to hold that the Franchise Agreement is a fabricated or bogus document.

7. Thus, in my opinion, the prayers as made by the petitioner in the Section 9 petition, granted as an ad-interim relief by this Court were within the framework of the specific clauses as contained in the Franchise Agreement and as noted above.

8. In the above circumstances, the applicant is not entitled to any relief as prayed for in the Application. It is accordingly rejected. No costs.

9. Needless to observe that the order dated 30<sup>th</sup> July, 2020 was an ad-interim order. The observations made in the said order and in the present order are *prima facie* observations. The principal proceedings are pending, hence all contentions of the parties on the principal proceedings are expressly kept open.

10. This order will be digitally signed by the Private Secretary of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.