

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

COMMERCIAL APPEAL NO.312 OF 2024

BETWEEN:

M/S. SAYESH ENTERPRISES
HAVING ITS OFFICE AT
53/1/2, HAZRA ROAD, FLAT 1C,
SHIVANGAM BUILDING,
KOLKATA-700 019,
REPRESENTED BY ITS SOLE PROPRIETOR,
MRS. JYOTI SACHDEV IYER,
AGED ABOUT 50 YEARS,
RESIDING AT E252,
THE BELAIRE, SECTOR 54,
GOLF COURSE ROAD,
GURGAON-12202.

...APPELLANT

(BY SMT. REVATHY ADINATH NARDE, ADVOCATE)

AND:

M/S. EMERALD VENTURES
AT NO.18/1, WOOD STREET,
RICHMOND TOWN,
BENGALURU-560 025,
REPRESENTED BY ITS SOLE PROPRIETOR,
MRS. ANJUM IMTIAZ,
AGED ABOUT 42 YEARS.

...RESPONDENT

(BY SRI AMIT A. MANDGI, ADVOCATE)

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THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO SET ASIDE THE ORDER DATED 02.08.2024 PASSED ON MEMO DATED 10.10.2019 IN COM.MISC.13/2019 BY LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU CITY (CCH.NO.88), PRODUCED AND MARKED AS ANNEXURE-A.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED ON 08-07-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **VENKATESH NAIK T. J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T.)

This Commercial Appeal is filed under Section 13(1A) of the Commercial Courts Act, 2015, praying to set aside the order dated 2-8-2024 passed on a Memo dated 10-10-2019 in Com.Misc.13/2019 by the LXXXVII Additional City Civil and Sessions Judge, Bengaluru.

2. For the sake of convenience, the parties are referred to as per their rankings before the trial Court.

The appellant is the plaintiff and the respondent is the defendant before the trial Court.

3. The brief facts of the case of the appellant are as under:

The appellant is a Fashion Designer, running a retail store and offering for sale of "Jyoti Sachdev Iyer" trademarked clothing, accessories, related products and services. The appellant and the respondent had entered into a Franchise Agreement dated 14-10-2017, wherein both the parties had arrived at a consensus that the respondent would sell outfits under the trademark of 'Jyoti Sachdev Iyer'. Thereafter, the respondent began violating the terms and conditions of the said Agreement. Thus, the appellant brought the said violations to the notice of the respondent, but the respondent failed to make any amends. On the other hand, the respondent had issued a termination notice dated 1-6-2018. Even subsequent to the issuance of notice, the respondent continued to violate the terms of the Agreement, more particularly, Clause 20.3 of the Agreement. Hence, the appellant had filed

Original Suit No.8060 of 2018 seeking directions of the trial Court, to direct the respondent to pay Rs.3,18,93,727/- along with current and future interest at the rate of 15% from the date of filing of the suit till the date of realisation. The appellant filed I.A. No.1 of 2018 under Order XXXIX, Rules 1 and 2 of Code of Civil Procedure, 1908, along with the plaint and sought for grant of *ex parte* ad-interim order of temporary injunction restraining the respondent, their agents, representatives, assignees, or anybody claiming through or under him from violating the non-compete Clause 20.3 as per Franchise Agreement dated 14-10-2017 from selling the products which directly or indirectly in any manner or capacity whatsoever complete with the franchised business, which was the subject matter of the Agreement in the suit.

4. After institution of the suit, the respondent-defendant appeared through his counsel and resisted the suit and I.A. by denying the allegations of violation of various Clauses of Franchise Agreement. On 17-12-2018, the trial Court granted an ad-interim order of temporary

injunction and restrained the defendant from violating Clause 20.3 of the Franchise Agreement. However, the defendant continued to violate the interim order and also sold the garments of the appellant-plaintiff without paying for it and without the consent of the plaintiff.

5. Therefore, the appellant-plaintiff being aggrieved by the conduct of the respondent-defendant, on 14-3-2019, had filed I.A. No.2 of 2019 in Com.O.S. No.8060 of 2018 for committing contempt (willful disobedience of the order of the trial Court) under Order XXXIX, Rule 2(a) of CPC. On 3-7-2019, I.A. No.2 of 2019 was numbered as Com.Mis.13/2019. Later, the defendant had filed a Memo dated 10-10-2019 challenging the maintainability of Com.Misc.13/2019.

6. Based on the Memo dated 10-10-2019, the trial Court dismissed Com.Misc.13/2019 as not maintainable. The order dated 2-8-2024 passed by the trial Court is as under:

"ORDERS ON MEMO DATED 10.10.2019

The respondent has filed a memo wherein he has contended that, in view of the decision rendered by the Hon'ble High Court of Karnataka in 1993 (2) KLJ 379 (DB) P.E.Narayana Swamy V/s. The Chairman and the MD, KSRTC, since original suit is still pending, contempt proceedings cannot be taken up. I have perused the order passed by this Court on I.A. No.1 dated 17.12.2018 wherein, the application filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC was allowed and an exparte order of temporary injunction was granted. Subsequently, I.A.No.1 filed by the plaintiff came to be dismissed on merits vide order dated 08.06.2020. This order was challenged by the plaintiff before Hon'ble High Court of Karnataka in Com.AP.No.23/2021 which also came to be dismissed. Order sheet dated 02.07.2019 shows, on that date plaintiff filed I.A.No.2 under Order XXXIX Rule 2(a) of CPC alleging contempt by the defendant by disobeying the exparte T.I. order granted by this Court. In my opinion, as I.A.No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC itself is dismissed and even the appeal filed by the plaintiff is also dismissed,

Misc.13/2019 is not maintainable. Hence, Com.Misc.13/2019 stands dismissed as not maintainable."

7. Being aggrieved by the order dated 2-8-2024 passed on the Memo dated 10-10-2019, the appellant-plaintiff has filed this appeal.

8. We have heard Smt. Revathy Adinath Narde, learned counsel for the appellant-plaintiff, and Sri Amit A. Mandgi, learned counsel for the respondent-defendant.

9. Learned counsel for the appellant-plaintiff has contended that in spite of ad-interim order granted by the trial Court, the respondent-defendant violated the non-compete Clause 20.3 of the Franchise Agreement and as such, an application under Order XXXIX, Rule 2(a) of CPC has to be continued. He further contended that the trial Court committed a serious error in dismissing Com.Misc.13/2019. Hence, the learned counsel prayed to allow the appeal.

10. In support of his contentions, the learned counsel relied on the following decisions:

- i. Syed Yousuf Ali v. Mohd. Yousuf and Others reported in 2016 SCC OnLine Hyd 37;*
- ii. M/s. Sayesh Enterprises v. M/s. Emerald Ventures in Commercial Appeal No.23 of 2021 disposed of on 27.07.2021, and*
- iii. Vittal Gurudas Pai, Since deceased by LRs., and Others v. M/s. Lepakshi Construction Corporation (Partnership Firm) and Others in Miscellaneous First Appeal No.7055 of 2013 (CPC) disposed of on 23-2-2021.*

11. *Per contra*, the learned counsel for the respondent-defendant has vehemently contended that where the appellant-plaintiff can be suitably compensated in terms of money, no order of temporary injunction would be granted. In fact, the relief, as sought for, by the plaintiff in the suit, in so far as seeking an order of temporary injunction against the defendant, is hit by Section 27 of the Indian Contract Act, 1872, as a restrictive covenant extending beyond the term of the

contract is void and unenforceable. He further contended that the defendant has terminated the Franchise Agreement dated 14-10-2017 by issuing termination notice dated 1-6-2018 and therefore, non-compete Clause assuming for a moment is enforceable against the defendant would only be for a period of two years, i.e. up to 1-6-2020 and beyond the said period, the 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. Therefore, the trial Court, considering the legal and factual aspects, rightly closed Com.Misc.13/2019. Hence, the learned counsel prayed to dismiss the appeal.

12. We have perused the appeal memo, plaint, I.A. No.1 of 2018, the order passed on I.A. No.1 of 2018, objections filed to I.A., Memo dated 10-10-2019, and impugned order dated 2-8-2024.

13. Com.Misc.13/2019 is arising out of *ex parte* ad-interim temporary injunction dated 17-12-2018 in Com.O.S. No.8060 of 2018 passed by the trial Court. The

records reveal that the trial Court granted *exparte* temporary injunction against the defendant. Subsequently, the defendant appeared and filed the objections. Accordingly, on 8-6-2020, the trial Court passed a considered order by rejecting I.A. No.1 of 2018 filed under Order XXXIX, Rules 1 and 2 read with Section 151 of CPC. Therefore, the interim order granted on 17-12-2018 in Com.O.S. No.8060 of 2018 was automatically terminated.

14. Being aggrieved by the order dated 8-6-2020 passed on I.A. No.1 of 2018 in Com.O.S. No.8060/2018 by the trial Court, the plaintiff preferred an appeal in Commercial Appeal No.23 of 2021 before this Court. This Court dismissed Commercial Appeal No.23 of 2021 filed by the plaintiff, by its order dated 27-7-2021 and confirmed the order of the trial Court.

15. Therefore, the order of rejection of temporary injunction by the trial Court came to be confirmed by a Co-ordinate Bench of this Court in Commercial Appeal No.23 of 2021. It shows that the *exparte* ad-interim temporary injunction does not subsist. It is settled

principal of law that it would not be fair to proceed against the defendant in contempt for violation of an *ex parte* interim order, when the temporary injunction order was vacated by a considered order and confirmed by the Appellate Court. It is clear that until the main suit is finally decided in original proceedings, the contempt of the Court proceedings (initiated under Order XXXIX, Rule 2(a) of CPC for willful disobedience of the interim order) cannot be proceeded with, as it will be a futile exercise of the jurisdiction, if the Court proceeds to consider the alleged violation of the *ex parte* interim order.

16. In the light of the aforesaid facts and circumstances, position of law, and the judgments relied on by the learned counsel for the appellant-plaintiff, which do not aid the appellant-plaintiff to continue Com.Misc.13/2019. While rejecting the application, the trial Court has rightly closed the proceedings under Order XXXIX, Rule 2(a) of CPC. Therefore, there is no merit in the appeal. Accordingly, the appeal is ***dismissed***.

In view of the dismissal of the main appeal, pending interlocutory applications, if any, shall stand dismissed.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

KVK