
(2011) 11 DEL CK 0126
In the Delhi High Court
Case No : O.M.P. 735 of 2011

Manikatalia Educations Pvt. Ltd.

APPELLANT

Vs

M/s Aviral Designs and Others

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2012) 50 PTC 558

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Rajeev Sharma, for the Appellant; Jitender Chaudhary, for the Respondent

Judgement

G.S. Sistani, J.—This is a petition u/s 9 of the Arbitration & Conciliation Act, 1996. Petitioner seeks the following reliefs:

- a) Pass ex-parte ad-interim order directing the respondents by themselves and through their agents, servants, assignees, representatives, successors and all other acting for and on their behalf to cease and desist from using the trade name/ mark FASHIONISTA;
- b) Pass ex-parte ad-interim order directing the respondents to return to the petitioner all the intellectual property of FASHIONISTA;
- c) Pass ex-parte ad-interim order directing the respondents to remove all internal and external FASHIONISTA branding at their centre; and
- d) Confirm the above said ex parte orders, after notice to the respondents;
- e) award the cost of this petition in favour of the petitioner and against the respondents

2. Petitioner is a private limited company incorporated under the Companies Act, 1956. The respondent No. 1 is partnership firm and respondent No. 2 and 3 are its partners. According to this petition, the petitioner, through its investment in

procedures, business, acumen, mythologies, training material, advertising has generated a market for specialized services uniquely of its own in the different fields under the trade name/ mark "FASHIONISTA" (the school of fashion technology).

3. Counsel for the petitioner submits that the franchise granted in favour of the respondent stands terminated and thus the respondent be restrained from using the trademark, "FASHIONISTA". Learned Counsel for the respondent submits that while terminating the franchise agreement, the petitioner has failed to adhere to the terms of the agreement between the parties.

4. Counsel for the respondent submits that barring one student, all other students have left the institute and the respondents have no intention of using the trademark, trade name FASHIONISTA or the study material with the said name, except in case of drop out students, who may approach them for assistance. It is pointed out that one of the students by the name of Babita is still enrolled with the respondent institute.

5. Counsel for the petitioner submits that the student, Babita, has now migrated to their institute and she is being provided necessary material and in case she wishes to attend classes, the petitioner will allow her, subject to petitioner's claim against the respondent. Counsel for the respondent submits that the respondents should be permitted to use the study material only for the drop out students. Counsel for the petitioner agrees to the same provided the respondent furnishes a list of drop out students and at the first instance the petitioner will ascertain whether the said student/students still wishes to continue with the respondent and if possible the petitioners will themselves provide the study material.

6. As agreed, subject to the above exception, the prayers made in the present petition are allowed. It is further pointed out that both the parties have appointed arbitrators, which are not acceptable to either of them. It is thus prayed that a former Judge of this Court may be appointed as a Sole arbitrator to adjudicate upon all disputes and differences, claims and counter claims arising between the parties. It is also agreed between the parties that in case of any modification or any other interim relief, parties will approach the said arbitrator.

7. Accordingly, Justice S.L. Bhayana, former Judge of this Court, (Cell No. 9871300028, Res.26920686) is appointed as Sole Arbitrator to adjudicate upon all disputes and differences, claims and counter claims arising between the parties. It is agreed between the parties that fee of the Arbitrator shall be borne by the parties equally as per the schedule maintained by Delhi High Court Arbitration Centre. The Arbitrator shall give prior notice to the parties before commencing the proceedings. Petition stands disposed of. Let a copy of this order be sent directly to the learned Arbitrator.