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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 31st October, 2022*+ **CS (COMM) 539/2021 and I.A. 14039/2021**

GEETANJALI STUDIO PRIVATE LIMITED & ANR. Plaintiff
Through: Mr. Manish Biala, Advocate.
(M:9810333571)

versus


RAHUL MAMTANI Defendant
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Plaintiff- Geetanjali Studio Private Ltd. and Mr. Sumit Israni have filed the present suit seeking protection of their mark 'GEETANJALI' which is used for salon, beauty parlour, etc. The Plaintiff claims to be one of the well-known salons based out of Delhi specializing in hair dressing, styling and make-up services, catering to national and international customers and eminent personalities of the fashion industry. The marks of the Plaintiff are registered in various Classes in 44 and 47. The details of which are as under:

<i>S. No.</i>	<i>Registration No.</i>	<i>Trade Mark</i>	<i>Class</i>	<i>Date of Application</i>	<i>Status</i>
1.	1839130		42	13-07-2009	Registered and valid till 13-07-2029
2.	2216134		44	15-10-2011	Registered and valid till 05-10-2021

3.	2497944	AHEAD	44	18-03-2013	Registered and valid till 18-03-2023
4.	3407748		44	10-11-2016	Registered and valid till 10-11-2026
5.	4115131	SUMIT ISRANI	44	12-03-2019	Registered and valid till 12-03-2029
6.	4334328	UTOPIA BY GEETANJALI	44	31-10-2019	Registered and valid till 31-10-2029
7.	4386183	TWEAK	44	23-12-2019	Registered and valid till 23-12-2029

3. The Plaintiff claims to have more than 100 salons/franchises across the country with a turnover of more than 44 crores for the financial year 2019-20. The Plaintiff runs its chain of salons under two names, 'GEETANJALI STUDIO' and 'GEETANJALI SALON', catering to two different segments - the sales of which have been set out in the Plaint. The plaintiff also shows promotional expense of approximately Rs.2 crores, spent on advertising and promotion of the said marks. The Plaintiffs have won several awards and accolades which are set out in paragraph 10 of the plaint. The website of the Plaintiff is <https://geetanjalisalon.com> and they also have an Instagram profile to promote their brand.

4. The Defendant is Mr. Rahul Mamtani who had obtained a license from the Plaintiff for running 'GEETANJALI STUDIO' in Vikas Puri. As per the plaint, the Defendant approached the Plaintiff in 2017 and entered

into a franchise agreement dated 27th November, 2017. The Defendant was permitted to use the mark 'GEETANJALI' as per the said agreement on a non-exclusive basis. The initial franchise fee of Rs.5,00,000/- was deposited. The Defendant was to also pay a monthly franchise fee of Rs.50,000/-. The case of the Plaintiff was that the franchise fee for some months was outstanding and, accordingly a demand letter was issued to the Defendant on 23rd February, 2019 to pay the outstanding amount of Rs.2,36,000/-. Again, further amount became due upon which a notice dated 24th December, 2019 was issued seeking payment of a sum of Rs.3,24,000/-. This amount continued to increase and as of 31st August, 2022 the due amount is stated to be Rs.4,49,000/-. Despite repeated follow ups the Defendant did not make the payment. The Plaintiff then terminated the franchise agreement vide notice dated 11th September, 2022 which was, further reiterated on several dates. Since the Defendant did not pay the franchise amount and did not also stop its use of the mark 'GEETANJALI', 'GEETANJALI STUDIO' and 'GEETANJALI SALON', the Plaintiff filed the present suit. Vide order dated 28th October, 2021, this Court had considered the matter and had granted an interim injunction in the following terms:

*“4. The plaintiffs have made out a prima facie case.
The defendant, etc. are restrained from using the*



*impugned trade mark
GEETANJALI,*

GEETANJALI



SALON,

GEETANJALI



STUDIO or any other mark that is identical or deceptively similar to the plaintiffs' trade mark 'GEETANALL which is subject matter of registration Nos. 1839130, 2216134 and 3407748 till further orders."

5. The Defendant has also been served with the suit summons and notices, as recorded in order dated 6th July, 2022. Mr. Manish Biala, Id. Counsel submits that, despite, the service, the Defendant is not appearing. However, it is submitted by Id. Counsel for the Plaintiff that the Defendant has now stopped use of the mark 'GEETANJALI'. The Defendant is accordingly proceeded *ex parte*.

6. The Franchise Agreement stands admitted in this case, as the Defendant has made payments of franchise fee to the Plaintiff. Some clauses of the franchise agreement are set out below:

"4. ACCEPTANCE BY FRANCHISEE

Franchisee accepts this Agreement and the license granted to Franchisee, and undertakes the obligation to develop and operate the Salon in accordance with the System using the Marks in strict compliance with the terms and conditions specified in this Agreement. Franchisee may not franchise, subfranchise, license or sublicense the rights granted to Franchisee in this Agreement.

5. NON-EXCLUSIVE LICENSE

The license granted to Franchisee is non-exclusive. The Franchisor has the absolute right to establish company-owned or franchised salons at any locations they choose outside the Authorized Location under this Agreement. Franchisor may operate or franchise a business under a

different trademark or name that sells goods and services similar to those offered by Franchisee and may engage in any other operation, haircare or otherwise, at any location and to any customer.

13. DURATION, TERMINATION AND RENEWAL AND TERMINATION CONSEQUENCES

13.1 This Agreement becomes effective on the date of signing and is valid for a period of 09 years.

13.2 Termination of the license of franchise for each Salon shall be separate.

13.3 In case Franchisor shall have the right to give a written default cure notice of 2 (Two) months to the franchisee and if the franchisee remedies the default within the default cure notice period, then the default cure notice shall stand waived. In the event of franchisee's failure to remedy default within the default cure notice period, the Franchisor shall have the right to terminate this Agreement by giving 1 (one) month written notice to the franchisee. The License of Franchise may be terminated by the franchisor by giving one month's notice to Franchisee in writing in any of the following events:

- a) If the Franchisor stops selling of services and products for any reason;*
- b) If the Franchisor commits breach of any term of this Agreement;*
- c) If the Franchisee fails to pay any sum due within next working day of the due date, unless extended by the Franchisor in writing;*
- d) If the Franchisor is ordered to be wound up by Court or goes into voluntary liquidation.*
- e) If the Franchisee activities are damaging to the Franchisor's Reputation or business directly or indirectly.*

13.4 Upon termination of this Agreement for whatever reason, the Franchisee will not be entitled to make use of

any trademarks of the Franchisor and all Intellectual Property rights and licenses granted to the franchisee in this Agreement shall immediately terminate upon termination. All claims or actions that one party has against the other shall remain intact despite termination.

13.5 Franchisee can also terminate the agreement with 30 (thirty) days prior written notice to Franchisor.”

17. USE OF INTELLECTUAL PROPERTY

17.1 The Franchisor grants to the Franchisee during the term of this Agreement a license and permission to use the brand name only in relation to the services provided at the Salon.

17.2 The use of the brand name by the Franchisee shall only be for the purposes of this Agreement, and will not create any right, title or interest in the brand name in favour of the Franchisee.

17.3 All Intellectual Property of the Franchisor is to be used only in the manner as specified in this Agreement.”

7. The above clauses are clear to the effect that the Defendant had to immediately stop use of the mark and not use any of the Intellectual Property of the Plaintiff. In view of the above clause, since the termination of the agreement has taken place, the Defendant would be liable to be permanently enjoined from using the Plaintiffs' marks.

8. Considering that the Defendant was an ex-franchisee of the Plaintiffs, and the terms of the franchise agreement are clear to the effect, that the Defendant acknowledges the Plaintiff's right in the mark 'GEETANJALI', no further oral evidence would be required in this matter, as held in ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja & Ors. [CS (OS) 3466/2012 decided on 20th February, 2014]***. The relevant observations from the judgment in ***Disney Enterprises Inc. (supra)***, are as under:

“3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex parte vide order dated 04.10.2013 and the plaintiffs permitted to file affidavits by way of ex parte evidence. 4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex-parte evidence on record. However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded and which mostly is nothing but a repetition of the contents of the plaint.”

9. The Defendant shall, accordingly, stand restrained in terms of paragraphs 48 (i) and (ii) of the prayer clause in the Plaint.

10. Insofar as the rendition of accounts and profits and delivery up are concerned, since there is no defence put up by the Defendant, considering the amounts which are stated to be due and the costs which the Plaintiffs had to incur in filing the present suit, the suit is decreed for a sum of Rs.7,50,000/- in favour of the Plaintiff against the Defendant, towards damages and costs. No other reliefs are pressed.

11. Decree sheet be drawn up in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 31, 2022

dj/am