Kunal Ramchandani Vs. Ramchandani Enterprises and ors.

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SooperKanoon Citation : sooperkanoon.com/701414

Court : Delhi

Decided On : Jul-24-2002

Reported in : 2002(64)DRJ194

Judge : K.S. Gupta, J.

Acts : Code of Civil Procedure (CPC) - Sections 151

Appeal No. : I.A. No. 3999/2002 in S. No. 838/97

Appellant : Kunal Ramchandani

Respondent : Ramchandani Enterprises and ors.

Advocate for Def. : Mahesh Mehta, Adv. for defendant No. 2, ; Vipin Sanghi and ;

Advocate for Pet/Ap. : Arun Vohra, Adv

Disposition : Application dismissed

Judgement :

K.S. Gupta, J.

1. Defendant No. 2 has filed this application under Section 151 CPC alleging that in terms of the order dated 22nd January 2002 after making sustained efforts he has been able to find a franchisee, namely, M/s. De Ornate, a sole proprietary concern of Mrs. Neha Batra having office at C-45, Kirti Nagar, New Delhi who is

willing to use Shop No. M-36B situated in Greater Kailash Part - I market under franchisee agreement (copy Annexure 'A'). It is prayed that defendant No. 2 may be appointed as Receiver of the said shop with an authority to enter into said franchisee agreement.

2. Plaintiff who is the son of defendant No. 2, has not opposed the prayer as made in the application. However, defendant No. 3 has contested the application by filing a detailed reply.

3. Present application has been filed in a suit filed by the plaintiff alleging that Smt. Sushila Ramchandani, his grand mother was the tenant in shop No. M-36B under Inder Nath Chawla on a monthly rental of Rs. 600/-. She had been running business of selling radios, record players, refrigerators, air-conditioners and electrical goods etc in the shop in the name of defendant No. 1 in partnership with her sons defendants 2 and 3. Each of the partner was having 1/3rd share in the profits and losses in business. It is further alleged that said Smt. Sushila Ramchandani died on 17th October 1995 leaving behind a Will bequeathing her 1/3rd share in said partnership firm as also tenancy rights in the shop in favor of the plaintiff. After her death the defendants 2 and 3 in collusion with each other have been trying to misappropriate the profits and assets of the firm and have even refused to show the books of account to the plaintiff. It was prayed that a preliminary decree of rendition of accounts be passed directing defendants 2 and 3 to render all the accounts of business of defendant No. 1 firm; plaintiff be declared as tenant in the said shop defendants 2 and 3 be restrained from creating any third party interest in the suit shop.

4. Defendant No. 3 contested the suit by filing written statement. It is, interalia, alleged that Smt. Sushila Ramchandani bequeathed her 1/3rd share in defendant No. 1 firm as also tenancy rights in suit shop in favor of answering defendant under a will dated 7th June 1995. So, the plaintiff is neither entitled to 1/3rd share in defendant No. 1 or tenancy rights in the suit shop.

5. I have heard Sh. Mahesh Mehta for defendant No. 2, Sh. Vipin Sanghi for defendant No. 3 and Sh. Arun Vohra for plaintiff.

6. Under the franchisee agreement (Annexure 'A') the franchisee is to pay monthly rent of Rs. 91,000/- or 1% of the total sales of the products whichever may be higher by way of commission. To be only noted that monthly rent payable of the suit shop is Rs. 600/-. During the course of argument on enquiry it was disclosed that business of diamonds and artificial jewellery is to be carried by M/s. DeOrnate, franchisee in the shop and neither defendant No. 2 nor defendant No. 3 carried such a business in the past. It was further disclosed that defendants 2 and 3 by means of an ad interim injunction have been restrained from subletting or parting with possession etc of the suit shop in a suit filed by the landlord against them pending before a civil court. Considering the contents of the said draft franchisee agreement which has been drafted guardedly as also the fact that said parties to the suit do not have any experience of running the business of diamonds and artificial jewellery which the franchisee proposes to carry in the suit shop, there is ample scope to contend that under the garb of the said agreement the possession of shop had been parted with to the franchisee. In case the prayer made in application is granted to defendant No. 2, he can take advantage thereof in the event of action being initiated by the landlord of shop for flouting by the defendants of the ad interim injunction to the said effect operating against them. In such a situation, defendant No. 2 cannot be appointed as Receiver of the suit shop with an authority to enter into franchise agreement (Ann. 'A') with M/s. De Ornate and the application deserves to be dismissed.

7. Consequently, the application is dismissed.