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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

MISCELLANEOUS FIRST APPEAL NO. 7168 OF 2024 (AA)

BETWEEN:

1. ROYAL ORCHID ASSOCIATED
HOTELS PRIVATE LIMITED,
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMAPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE
AT NO.1, GOLF AVENUE,
KODIHALLI, OFF AIRPORT ROAD,
BANGALORE-560 008,
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. MAURICE REDDY.

...APPELLANT

(BY SRI. ARUN KUMAR, SENIOR COUNSEL FOR
SRI PRADHYUMAN SINGH, ADVOCATE FOR
M/S. CRESTLAW PARTNERS)

AND:

1. M/S. HOTEL GRAND CENTRE POINT,
A PARTNERSHIP REGISTERED UNDER
THE PARTNERSHIP ACT AND
HAVING ITS REGISTERED OFFICE
AT HOTEL GRAND CENTRE POINT,
NEAR HATRICK RESTAURANT, RAJ BAGH,
SRINAGAR – 190 001,
REPRESENTED BY ITS PARTNER.

2. MOHAMMAD RAFEEQ KARNAI,
S/O LATE ABDUL RAHEEM ,
PARTNER OF M/S. HOTEL GRAND CENTRE POINT,
HAVING ITS REGSITERED OFFICE

ADDRESS AT HOTEL GRAND CENTRE POINT,
NEAR HATRICK RESTAURANT, RAJ BAGH,
SRINAGAR-190 001.

3. MANSOOR AHMED KARNAI,
S/O LATE ABDUL RAHEEM,
PARTNER OF M/S. HOTEL GRAND CENTRE POINT
HAVING ITS REGSITERED OFFICE
AT HOTEL GRAND CENTRE POINT,
NEAR HATRICK RESTAURANT, RAJ BAGH,
SRINAGAR-190 001.

4. NAZIR AHMED KARNAI,
S/O LATE ABDUL RAHEEM,
PARTNER OF M/S. HOTEL GRAND CENTRE POINT
HAVING ITS REGSITERED OFFICE
AT HOTEL GRAND CENTRE POINT,
NEAR HATRICK RESTAURANT, RAJ BAGH,
SRINAGAR-190 001.

5. BASHIR AHMED KARNAI,
S/O LATE ABDUL RAHEEM,
PARTNER OF M/S. HOTEL GRAND CENTRE POINT
HAVING ITS REGSITERED OFFICE
AT HOTEL GRAND CENTRE POINT
NEAR HATRICK RESTAURANT, RAJ BAGH,
SRINAGAR-190 001.

…RESPONDENTS

(BY SMT. SHEETHAL SONI, ADVOCATE C/R2)

THIS MFA IS FILED UNDER SECTION 37(1)(b) OF THE ARBITRATION AND CONCILIATION ACT 1996, AGAINST THE ORDER DATED 01.10.2024 PASSED ON IA.NOS.5 TO 7 IN AA.NO.4/2024 ON THE FILE OF THE IX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING THE IA.NO.V TO VII FILED UNDER ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC AND SECTION 9 OF THE ARBITRATION RULES (PROCEEDINGS BEFORE THE COURT) 2001.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

ORAL JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the caveator/respondent No.2.

2. This miscellaneous first appeal is filed challenging the order of the Trial Court dated 01.10.2024 dismissing I.A.Nos.5 to 7 in AA No.4/2024 which have been filed under Order 39 Rules 1 and 2 read with Section 151 of CPC and Section 9 of the Arbitration Act read with Rule 9 of the Arbitration (Proceedings Before the Courts) Rules, 2001. I.A.No.5 was filed praying to grant an order of temporary injunction restraining respondent No.2, his representatives, successors in interest and anyone claiming under through him from obstructing or impeding the smooth functioning and operations of the hotel premises/schedule property in any manner, pending disposals of the suit.

3. I.A.No.6 was also filed under the very same provision of law seeking the relief of temporary injunction restraining respondent No.2, his representatives, successors in interest and anyone claiming under through him from interfering, obstructing and/or in any manner impeding, either

directly or indirectly with the management and operations of the hotel premises/schedule property in any manner, pending disposal of the suit.

4. I.A.No.7 was also filed under the very same provision of law seeking the relief of temporary injunction restraining respondent No.2, his representatives, successors in interest and anyone claiming under through him from interfering, obstructing and/or in any manner impeding, either directly or indirectly with the staff member and/or guests/customers of the petitioner in the hotel premises/ schedule property in any manner, pending disposal of the suit.

5. In support of the applications, an affidavit is sworn to contending that on 23.03.2019, a franchise agreement was entered between the parties for operating the hotel premises on the schedule property. It is contended that the petitioner being one of the India's finest and fastest growing hotel chain and being one of the most sought-after hospitality brands in the industry, enters into hotel operation agreement with the owner of the properties and lending them goodwill associated with the internationally renowned "Royal Orchid" "Regenta" and "Regenta Central" brand name amongst others. The respondent No.1 is a

partnership firm registered under the Partnership Act, 1932. The respondent Nos.2 to 5 are partners of respondent No.1. The respondent No.1 is the owner of a hotel premises located near Hatrick Restaurant, Raj, Bagh, Srinagar, Jammu and Kashmir "Premises" or "Schedule Property". The parties entered into a franchisee agreement dated 23.03.2019, wherein the petitioner would aid and facilitate the business of respondent No.1 by contributing through its brand reputation, technical know-how, training and expertise in running premium quality hotel businesses. Subsequent to execution of the agreement, the management and operations of respondent No.1 were smoothly being carried out. However, respondent No.2 started unnecessarily interfering in the functioning of the hotel premises. The respondent No.2 has been shouting at staff in the reception and threatening to cancel bookings, take away records if he is not paid exorbitant sums separately over and above what is agreed under the agreement. Therefore, the operations of the hotel under the petitioner's name and guests, is under serious jeopardy.

6. It is further contended that the interference and disturbances being caused by respondent No.2 are in blatant violation of the agreement. Clause 5.1 of the agreement clearly

stipulates that respondent No.1 Firm will maintain a high moral and ethical standard and atmosphere at the hotel premises. The maintenance of atmosphere at the hotel premises is an essential and indispensable part of providing the best quality hospitality services to the customers of the petitioner. The disturbances being caused by respondent No.2 has a direct bearing on the customer experience and impacts the day-to-day functioning, business operations and prospective profits of the petitioner. As a consequence of the conduct of respondent No.2, the petitioner was constrained to approach this Court to seek exparte ad-interim injunctive relief's restraining the respondent from taking any steps to interfere with the smooth operation of the hotel premises, interference with staff and guests in the hotel premises or from taking any steps to terminate the agreement and create third party rights. It is contended that agreement is for a period of ten years and notice was also issued and reply was also given by respondent No.2 for initiating of the prima facie proceedings despite being well aware of the interim order that was passed by the Court, the respondent has continued to interfere with the smooth operations of the hotel premises. The respondent Nos.2 and 3 have threatened the use of physical force to coerce the petitioner, their representatives and

employees to remove themselves from the hotel premises. The petitioner received an e-mail dated 26.03.2024 from the General Manager of the hotel, documenting the grave and serious threats being made by respondent Nos.2 and 3 to close down the hotel. These actions of respondent No.2 are in blatant violation of the interim order dated 17.02.2024 passed by this Court and once again the petitioner was constrained to approach the Court for protection and also sought for appropriate directions against the respondents and hence I.As. are filed seeking for the interim order of temporary injunction.

7. The respondent No.2 appeared and filed the statement of objections contending that the suit itself is not maintainable and petitioner is not having any locus standi. It is contended that respondent No.2 is not a signatory to the franchisee agreement and the suit is hopelessly barred by limitation as their franchisee agreement on which the case is based upon is not in existence at the time of filing this petition. It is also contended that the case is not maintainable before this Court for want of territorial jurisdiction as the suit schedule property is situated in the State of Jammu and Kashmir and though it has been mentioned in Clause 19.1 of the franchisee agreement that the jurisdiction will be at Bengaluru, but as per

the settled principal of injunction, for the relief of injunction petition must be filed before the High Court of Karnataka. It is pertinent to note down that no franchisee agreement is above the law. It is contended that respondent No.5 started concealing material information of the hotel and also started obstructing the ingress and egress of the petitioner in the hotel with an intention to grab the shares of respondent No.2 in the profits of the hotel. The respondent No.2 have authority to enter profits of hotel premises and participate towards smooth operations of hotel business as per partnership agreement dated 01.04.2012. The respondent No.5 is not allowing respondent No.2 in the profits of the hotel and hiding the profits of hotel business and respondent No.5 is not allowing the respondent No.2 to inspect the books of accounts, ledgers or bills etc. or any stock register or any balance sheet. In the year 2021, respondent No.3 filed a suit for declaration, partition and injunction and for rendition of accounts before the Court of Additional District and Sessions Judge, at Srinigar in Case No.1071/2021. Accordingly, suit is arrived at compromise between the parties by its compromise decree dated 20.04.2022. It is also the contention that respondent Nos.2 and 3 together filed a arbitration petition against respondent Nos.4

and 5 before the Court of Principal District Judge at Srinigar in Case No.Arb.No.1771/2024 and accordingly petition arrived at by its order dated 01.04.2024. The said suit was disposed of by way of compromise between the parties whereby the operation of the hotel was the responsibility of respondent No.5 and daily cash transaction of the hotel was the responsibility of respondent No.5 and the profit accrued from the hotel was to be shared among the respondent Nos.5 and 2 in the ratio as per the settlement between the parties. After the expiry of two years, respondent No.5 did not step down from conducting the operation of hotel and is not allowing respondent No.2 to enter the hotel and operate the same nor respondent No.5 is allowing the parties to conduct the voting as per the terms and conditions of the settlement deed arrived between the parties.

8. The Trial Court having taken note of the pleading of the parties, framed the points whether the petitioner proves the prima facie case, balance of convenience and whether petitioner proves that in case temporary injunction is not granted, it will be put to irreparable loss and injury and the Trial Court answered all the points in the negative. The Trial Court while coming to such a conclusion made an observation in paragraph No.27 that there is no dispute between the company, hotel and

characteristics of hotel by both the parties. The main contention of the petitioner is that the respondents hotel used the name of the petitioner for business and if any quarrels and unwanted issues created by respondent No.2 in the hotel, then the petitioner will lose the reputation of his name in the eyes of customers. The Trial Court also taken note of that the respondents contention is that the arbitration proceedings has to be started within 90 days and franchisee agreement entered into between one respondent and all other respondents have not given any authorization as per the partnership deed and further contended that as per Section 21 of the Arbitration and Conciliation Act, both parties have to agree for which respondent has not agreed to the same to notice sent by the petitioner. The Trial Court in paragraph No.28 made an observation with regard to the partnership deed produced by respondent No.2, that "no partners shall without the previous consent in writing of the other partner shall assign, mortgage or charge his/her share or interest in the partnership wholly or in part to any person other than the other partner and also taken note of the recital in the partnership. The Trial Court also made an observation that ofcourse this Court cannot decide the merits of the case but here a crucial point is involved about the business transactions

and to who has prima facie case and balance of convenience these facts are relevant to understand this. As per the above clause in partnership deed the partner who enters into any agreement has to get the consent in writing of other partners. The Trial Court taken note of Section 21 of the Arbitration and Conciliation Act and extracted the same and held that as per the above provision, it is clearly stated that the other party has to agree on the request made by one party for referring the matter to arbitration and such request is received by respondent No. 2 herein. As per above provision respondent No.2 should agree for the request of the petitioner to refer the matter to arbitration. The Trial Court taking note of these aspects into consideration comes to the conclusion that the plaintiff has not made out a prima facie case and balance of convenience and rejected the I.As.

9. Being aggrieved by the said order, this present appeal is filed and the learned counsel for the appellant would contend that earlier temporary injunction was granted on 17.02.2024. On two grounds the Trial Court has invoked for vacating the interim order. The learned counsel brought to the notice of this court Section 19 of the Partnership Act and contend that franchisee agreement is for a period of 10 years

from 2019 to 2029. The learned counsel contend that notice was given on 04.04.2024 for appointment of arbitrator wherein also in the notice specifically mentioned the name of the arbitrator and reply was given on 23.04.2024. The learned counsel brought to the notice of this Court the judgment of the Division Bench of this Court in the case of **SERVE AND VOLLEY OUTDOOR ADVERTISING PRIVATE LIMITED v. BRUHAT BENGALURU MAHANAGARA PALIKE, BANGALORE AND OTHERS** reported in **MANU/KA/1082/2021,** wherein discussion was made in paragraph No.14 with regard to Sections 21 and 43 of the Arbitration Act. It is held therein that as per Section 21 read with 43(2) of the Arbitration Act, an arbitration shall be deemed to have commenced on the date on which a request for reference to arbitration is received by the respondent. However, if the parties agree under the agreement to some other event for commencement of arbitration that would have effect. Notice under Section 21 has to be served and received by the respondent. If no notice is received by the respondent, then there is no commencement of arbitral proceedings under Section 21. Thus, the date of commencement of the arbitration would be relevant for determining whether any claim is barred by limitation. A time barred claim in arbitration

is to be dealt with in the same manner as a time barred prayer in a suit, covered by Section 3 of the Limitation Act. Thus, in the absence of an agreement, Section 21 of the Arbitration Act states that arbitral proceedings commence on the date on which a request for reference to arbitration is received by the respondent.

10. The learned counsel also submits that CMP application was filed on 28.06.2024 and brought to the notice of this Court Section 9(2) of the Arbitration and Conciliation Act and contend that sub-Section (2) of Section 9 says where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-Section (1), the arbitral proceedings shall be commenced within a period of 90 days from the date of such order or within such further time as the Court may determine. The learned counsel contend that in the case on hand, even though order was granted on 17.02.2024 granting ad-interim injunction, on 04.04.2024 itself notice was given within a period of three months and steps were taken and after the issuance of notice only when the reply was given not agreeing for appointment of arbitrator, a petition was filed on 28.06.2024 and hence the

very contention of respondent No.2 that not filed the petition within time cannot be accepted.

11. Per contra, the learned counsel for respondent No.2 would contend that the very franchisee agreement is not valid and submits that partnership is also dissolved and issue was also taken before the Court of Srinagar and family settlement was arrived between the parties. The learned counsel submits that no authorization was given to enter the franchisee agreement and respondent No.2 is not a consenting party. The learned counsel submits that family settlement happened on 20.04.2022 and partnership also stands cancelled and when such being the case, there cannot be any preventive order against respondent No.2. The learned counsel submits that CMP is filed after four months and should have been filed within three months. The learned counsel in support of her arguments relied upon the order passed by this Court in the case of **M/S. PATON CONSTRUCTIONS PRIVATE LTD. v. M/S. LORVEN PROJECTS LTD.** reported in **AIR 2017 KAR 135** and brought to the notice of this Court the discussion made by this Court in paragraph No.2, wherein contention was raised by the learned counsel for the appellant that, in view of Rule 9(4) of the High Court of Karnataka Arbitration (Proceedings before the Courts),

Rules 2001, the impugned order dated 21.12.2013 granting the interim measure under Section 9 of the Act stood vacated on the expiry of three months from the date of presentation of the application under Section 9 of the Act, as arbitral proceedings were not initiated within the aforesaid three months. To examine the contention urged, Rule 9(4) of the Rules requires to be noticed and the same was extracted and discussion was made that the above extracted sub-rule states that in the case of an application for any interim measure made before initiating arbitral proceedings, if the arbitral proceedings in respect of the dispute are not initiated within three months from the date of presentation of the application under Section 9 of the Act, any interim order granted shall stand vacated without any specific order to that effect by the Court which passed the order. It is relevant to state that 'any interim order' referred to in Rule 9(4) extracted above, in the context, shall include any order granting any interim measure. The learned counsel referring this judgment would contend that when the proceedings has not been initiated within a period of three months from the date of interim order, in view of the said Rule, automatically it stands vacated and the contention of the learned counsel for the

appellant that initiation of notice itself is commencement of arbitral proceedings cannot be accepted.

12. Having heard the learned counsel for the appellant and the learned counsel for respondent No.2 and considering the principles laid down in the judgments referred (supra) by both the learned counsel and also considering Sections 9, 21 and 43 of the Arbitration and Conciliation Act as well as Rule 9(4) of the said Rules, the points that arise for the consideration of this Court are:

(i) Whether the Trial Court committed an error in vacating the interim order granted in dismissing I.A.Nos.5 to 7 and whether it requires interference of this Court?

(ii) What order?

13. Having heard the respective learned counsel, it is not in dispute that there was a franchisee agreement between the appellant and the respondent partners and the same is dated 23.03.2019. It is also not in dispute that the appellant was running a hotel without any hindrance from 2019 till 23.01.2024 and the appellant also specifically pleaded in the plaint that respondent No.2 has been illegally interfering with the smooth operations of the hotel premises. It is not in dispute

that the franchisee agreement was entered into between the appellant, respondent No.1 and other partners and no doubt there was a difference between the partners and then started the problem. The respondent No.2 started interfering with the business of the appellant. It is also not in dispute that the suit is filed wherein it is specifically pleaded with regard to the interference of respondent No.2 and also interim order was granted on 17.02.2024 when the proceedings was initiated under Section 9 of the Arbitration proceedings. The learned counsel for the appellant brought to the notice of this Court that they have issued notice on 11.04.2024 and the same is acknowledged by respondent No.2 and he has given reply on 23.04.2024, wherein he has rejected the offer of appointing an arbitrator to resolve the issues among them. It is not in dispute that CMP was filed on 28.06.2024. The contention of respondent No.2 is that franchisee agreement is not valid and he is not a consenting party and the said contention cannot be accepted for the reason that, there was an agreement in the year 2019 itself for running the hotel. No doubt, there was a dispute between the partners and there was a family settlement between them and also the document is placed with regard to the family settlement is concerned.

14. It has to be noted that when the period was given as ten years for running the hotel and if there is any dispute between the partners, the same was not *inter se* business of the appellant and the respondent. It is also important to note that when there is an arbitration dispute and reference is also made after filing of the petition under Section 9, the only moot question involved before this Court in view of the contention of the learned counsel for the appellant and respondent No.2 is whether the proceedings in CMP is initiated within three months. No doubt, Section 9 of the Arbitration and Conciliation Act, 1996 discloses that the Court can grant interim relief to the aggrieved party before or during arbitral proceedings or at any time after making of the arbitral award. Section 9(2) of the Arbitration and Conciliation Act, 1996 is very clear, before commencement of arbitration proceedings, if the Court passes an order of interim measure of protection under Section 9(1) of the Arbitration and Conciliation Act, 1996 the arbitral proceedings shall commence within a period of 90 days from the date of such order or within an extendable timeline as per the courts' discretion.

15. In the case on hand, the extendable time which the Court may determine does not arise, as there is no such order. It is also important to note that Rule 9(4) of the High Court of

Karnataka (Proceedings before the Courts) Rules, 2001 is also clear that after a party obtains any relief from a Court under Section 9 of the Arbitration and Conciliation Act, 1996, such a party is required to take steps to commence arbitration proceedings. Rule 9(4) further states that if a party fails to take steps to commence arbitration, any interim order granted by the Court shall stand automatically vacated. Further, if the arbitral proceedings are not initiated within three months from the date of presentation of application, the interim order would stand vacated. Hence, this Court has to read Section 9(2) of the Arbitration and Conciliation Act, 1996 as well as Rule 9(4) of the High Court of Karnataka (Proceedings before the Courts) Rules, 2001 conjointly and on conjoint reading of both Section 9(2) and Rule 9(4), it is clear that within 90 days from the date of such interim order being granted, under Section 9(1) of the Arbitration and Conciliation Act, 1996, arbitration proceedings has to be initiated and also Rule 9(4) is very clear that, in case of any application for interim-measure is filed before the Court, if the arbitration proceedings is not initiated within three months from the date of presentation of application under Section 9, interim order shall stand vacated. The word used is 'shall'.

16. Learned counsel for the appellant relies upon the judgment of the Division Bench of this Court in **SERVE AMD VOLLEY OUTDOOR ADVERTISING PRIVATE LIMIED VS. BRAUHAT BENGALURU MAHANAGARA PALIKE, BANGALORE AND ORS.** decided on **08.01.2021**, wherein discussion was made with regard to Section 21 as regards commencement of arbitration proceedings, wherein Section 3 of the Limitation Act is also discussed in paragraph No.14. The Division Bench of this Court, having extracted Sections 21 and 43 of the Arbitration Act, 1996 discussed that as per Section 21 read with Section 43(2) of the Arbitration Act, an arbitration shall be deemed to have commenced on the date on which a request for reference to arbitration is received by the respondent. However, if the parties agree under the agreement to some other event for commencement of arbitration that would have effect. In the case on hand, no such agreement is entered into between the parties. It is also clear that notice under Section 21 has to be served and received by the respondent No.2. If no notice is received by the respondent No.2, then there is no commencement of arbitral proceedings under Section 21 of the Arbitration Act. Thus, the date of commencement of arbitration would be relevant to determine

whether information claimed and received is barred by limitation and the case on hand, the notice is given on 11.04.2024. Whether the notice is a commencement of arbitration proceedings is the issue, since the learned counsel for the respondent No.2 would contend that the appellant ought to have filed the petition within a period of 90 days in view of Rule 9(4) which has been referred supra. It is also very clear that as per Section 9(2) of the Arbitration Act, where before the commencement of arbitral proceedings, a Court passes an order of interim measure under 9(2) of the Arbitration Act, within a period of 90 days from the date of such order or within such period, the petition has to be filed. In the case on hand, no doubt, the interim order has been granted on 17.02.2024, having conjointly read Section 9(2) of the Arbitration Act as well as Rule 9(4) High Court of Karnataka (Proceedings before the Courts) Rules, 2001, it is clear that maximum period given is 90 days.

17. This Court also in the judgment referred supra by the respondent No.2 in **M/S. PATON CONSTRUCTIONS PRIVATE LTD. v. M/S. LORVEN PROJECTS LTD.** reported in **AIR 2017 KAR 135** invoked Rule 9(4) and extracted the same, comes to the conclusion that in case of an application for any

interim measure made before initiating arbitral proceedings, if the arbitral proceedings in respect of the dispute are not initiated within three months from the date of presentation of the application under Section 9 of the Act, any interim order granted shall stand vacated without any specific order to that effect by the Court which passed the order.

18. No doubt, in the case on hand, there was an interim order on 17.02.2024, the very contention of the learned counsel for the appellant is that notice was issued on 11.04.2024 and notice was served and reply was given on 23.04.2024 rejecting offer and the notice is within time and the appellant approached the Court by filing CMP within the time period by issuing notice. But, admittedly petition was filed on 28.06.2024 which was after 90 days and three months time as stipulated under Section 9(2) and Rule 9(4). When such being the case, the contention of the learned counsel for the appellant that issuance of notice is within time cannot be accepted. The judgment of the Division Bench of this Court in **SERVE AMD VOLLEY OUTDOOR ADVERTISING PRIVATE LIMIED's case** is very clear that an arbitration shall be deemed to have commenced on the date on which a request for reference to arbitration is received by the respondent. However, if the parties agree under the agreement to some

other event for commencement of arbitration that would have effect. But, in the case on hand, no such agreement and the same was refused while giving reply and mere initiation of notice itself cannot be construed as commencement of proceedings. Hence, the contention of the learned counsel of the appellant cannot be accepted.

19. When the proceedings has not been initiated within the period of 90 days or three months as contemplated under Section 9(2) as well as Rule 9(4), the very contention of the learned counsel for the appellant cannot be accepted as the notice was given. However, there is a force in the contention of the learned counsel for the appellant that Trial Court committed an error in relying upon partnership deed in paragraph No.28 i.e., "None of the partners shall without the consent of the other partner in writing monies, goods and effects belonging to the partnership firm for the purposes other than those for the purpose of partnership business and matters arising out of or in the course of such business" and "No partners shall without the previous consent in writing of the other partner shall assign, mortgage or charge his/her share or interest in the partnership wholly or in part to any person other than the other partner", in coming to the conclusion that Court cannot decide the merits of

the case and decide who has prima facie case and balance of convenience and these facts are relevant to understand this is an erroneous observation, since there was an agreement in the year 2019 itself and the partners have also kept quite from 2019 to 2023 i.e., till filing of the petition under Arbitration Act and if any dispute arises between the partners that cannot be a ground to come to a conclusion that there was no consent. The Trial Court has given reasoning that there is no prima facie case, since respondent No.2 was not party to the said agreement and the same cannot be accepted as there was a franchisee agreement to run the hotel.

20. However, taking note of the question involved in the matter, particularly time frame under Section 9(2) as well Rule 9(4), initiation of the proceedings is not within time and Trial Court also taken note of the same while vacating the interim order in paragraph No.28 that respondent's contention is that arbitration proceedings has to be started within 90 days and Franchise agreement entered into between one respondent and further contended that, all other respondents not given any authorization as per the partnership deed and further contended that as per Section 21 of the Arbitration and Conciliation Act, both parties has to agree for which respondent has not agreed

to the same to notice sent by the appellant. But the very approach with regard to the other partners have not given authorization cannot be a ground and the same is an *inter se* dispute between them. When the arbitration proceedings has not been initiated within time and Section 9(2) proviso of the Act is clear that it has to be initiated within 90 days and the same has not been initiated within 90 days and issuance of notice itself is initiation of the arbitration proceedings and it has to be construed as commencement of arbitration proceedings cannot be accepted and issuance of notice itself is not commencement of proceedings and the same is only for steps taken for initiation of proceedings. In the case on hand, in reply rejected the offer on 23.04.2024 itself and ought to have filed on or before 17.05.2024 itself, but filed on 28.06.2024. Hence, I do not find any merit to come to the conclusion that the Trial Court has committed an error in dismissing the applications.

Accordingly, the miscellaneous first appeal is dismissed.

Sd/-
(H.P.SANDESH)
JUDGE

MD/ST
List No.: 1 Sl No.: 46