

**IN THE COURT OF THE ADDL. DISTRICT JUDGE-III, MANJERI**

Present:- Sri. Thushar M., Addl. District Judge-III.

Friday, the 22<sup>nd</sup> day of December, 2023

the 1<sup>st</sup> day of Pousha, 1945

**ORIGINAL SUIT No. 03/2022**

**Between:-**

1. Iquib Miyad P., 29 Years,  
S/o. Hashif, Mill View, Petta, Feroke,  
Kozhikode Taluk, Kerala – 673 631.
  2. Arabian Majlis LLP,  
10/904, P1 Building, Chungam, Feroke,  
Kozhikode, Kerala-673 631,  
Represented by its Authorised signatory and  
Designated partner Iquib Miyad P.
- } Plaintiffs


**And:-**

1. Asharaf M, 51 Years,  
S/o. Kammad Kutty Haji M, Mennayikkode House,  
Thalekkara, Kottapuram, Andhiyoorkunnu Post,  
Pulikkal, Malappuram, Kerala – 673 637.
  2. Najad P.V, 31 Years,  
S/o. Kammad Kutty, Naduvilakandy House,  
Kottappuram, Andhiyoorkunnu Post, Pulikkal,  
Malappuram, Kerala – 673 637.
  3. Arabian Mathbak, New Bus Stand Road,  
Perinthalmanna, Malappuram District,  
Represented by its Managing Partner.
- } Defendants

This suit coming on the 22<sup>nd</sup> day of December, 2023 for hearing before me in the presence of Sri. A.K. Muhammed Hashim, Sri. Dilshad Roshen K.M., Sri. Anoop Emmatty A and Sri Thwalhath V., Advocates for the plaintiffs and of Sri. Anwar C.K., Advocates for the respondents, and having stood over to this day for consideration, the court delivered the following:-

## J U D G M E N T

Plaintiff is a highly reputed restaurant business chain operating various cuisines in Kerala, Dubai and UAE. Plaintiff No.2 has been using the plaintiff marks through plaintiff No.1 who is the registered proprietor of trade marks. The trade marks registration obtained are vide Nos. 4176733, 5439052, 5439053 and 5439054. The trade marks are reproduced below:-

Sl No.	Trademark	Status	Class and Description	Application No.	Document No.
	<b>ARABIAN MAJLIS</b>  [DEVICE MARK]	<b>Registered</b>	<b>Class 43:</b> Services for providing food and drink; temporary accommodation.	4176733	<b>Document No. 3</b>
2	  [DEVICE MARK]	<b>Accepted &amp; Advertised</b>	<b>Class 35:</b> Services of retail and wholesale outlets and showrooms; trading, marketing, advertising, supplying and franchisee services.	5439052	<b>Document No. 4</b>
3	<b>ARABIAN MAJLIS</b>  [WORD MARK]	<b>Accepted &amp; Advertised</b>	<b>Class 35:</b> Services of retail and wholesale outlets and showrooms; trading, marketing, advertising, supplying and franchisee services.	5439053	<b>Document No. 5</b>
5	<b>ARABIAN MAJLIS</b>  [WORD MARK]	<b>Accepted &amp; Advertised</b>	<b>Class 43:</b> Hotels, restaurants, coffee shops, cafe and catering services; services for providing food and drink; temporary accommodation.	5439054	<b>Document No. 6</b>

2. This suit is filed seeking a decree for permanent prohibitory injunction restraining defendants from passing of the register trade mark 'ARABIAN MAJLIS' with logo.



3. Plaintiffs and defendant executed a Franchise Agreement for the purpose of granting license, services, and know-how on the preparation of food items. The defendants were granted franchise license for the operation of plaintiff restaurant business in Perinthalmanna. Since the plaintiffs came to be aware that defendants varied and deviated from the agreed terms plaintiff had issued show cause notice to which an unsatisfactory reply was sent by defendants. Plaintiff had sent another reply to this. Thereafter plaintiff had issued franchise terminating letter terminating the franchise of the defendants.

4. Defendants however continues to operate the business in the name and style 'ARABIAN MAJLIS' with the logo of the plaintiff. Thus the suit had been filed seeking permanent prohibitory injunction restraining the defendants from using the trade mark 'ARABIAN MAJLIS' and the plaintiffs logos or use any other mark similar to it. Mandatory injunction is also sought to remove all advertisements, banners etc depicting any form of association or affiliation to plaintiffs or plaintiffs business under the trade name 'ARABIAN MAJLIS' and the logos. Amendments is carried out as per order in IA 09/2023 by which plaintiff sought for damages of Rs. 5,00,000/- (Rupees Five Lakh only).

5. Defendants filed written statement denying the petition averments. Defendants would say that his business is being conducted under the name and style 'MATHBAK ARABIAN MAJLIS'. Defendants denied that the logo of the plaintiffs was being used by them. The plaintiff has only one registered trade mark and the other

marks are accepted and advertised by registering out of which application No. 5439053 and 5439054 is facing opposition from defendants on various grounds.

6. The entry of franchise agreement between plaintiff and defendants is admitted. However the defendants case is that they had spent 90,00,000/- (Rupees Ninety Lakh only) to set up infrastructure and also paid 5,50,000/- (Rupees Five Lakh and Fifty Thousand only) towards franchise fees. However the quantity and quality of masala and other ingredient was changed by the plaintiff which affected the taste and quality of the food. This intern affected the business. The defendants had applied for trade mark registration under different style and appearance with a trade mark MATHBAK ARABIAN MAJLIS.

7. The original chef namely K Oshiulla Alias Wasim left the plaintiff due to some misunderstanding and joined the defendants. This caused ill will between plaintiffs and defendants and plaintiffs had unilaterally withdrawn franchise agreement causing huge loss to defendants. Defendants had approached Commercial Court Manjeri and mediation notice PIM No. 37/2023 was issued. The defendants are not using any trade mark similar to that of plaintiff. The "ARABIAN" and "MAJLIS" are generic and common terms and the final right over the said words claimed by the plaintiff are subject to the final decision of trade mark registry after considering the oppositions filed by the defendants. The defendants are not using any of the plaintiffs trade marks in any platform. There is no infringement or passing off as alleged by the plaintiff. No loss has been caused to the plaintiff. Hence suit is to be dismissed with compensatory cost.

8. Additional written statement was filed after the amendment in which the defendants stated that they are presently using the trade mark MATHBAK MAJLIS. They have denied that any loss has been caused to the plaintiff.

9. Based on the above contentions following issues and additional issue has been raised:-

- 1 Whether the trade mark "ARABIAN MAJLIS" with logos are the unique trade mark of plaintiffs ?
- 2 Whether plaintiff is entitled to the relief of Permanent Prohibitory Injunction, as prayed for ?
- 3 Whether plaintiff is entitled to the relief of Mandatory Injunction, as prayed for ?
- 4 Whether plaintiff is entitled to the relief of declaration, as prayed for ?
- 5 Relief and cost.

**Additional Issue:-**

1. Whether the petitioner is entitled to claim any damages from defendants and if so what is the quantum ?

10. When the case is posted for evidence plaintiff had submitted that he had approached Hon'ble High Court seeking extension of time from the 6 months period ordered by the Hon'ble High Court. The s-/submission was made on 13.12.2023. Since it was submitted that Hon'ble High Court has been approached case was adjourned to 21.12.2023 since judicial discipline mandated it. However on 21.12.2023 plaintiff counsel sought time for evidence and it was posted to 22.12.2023. Hon'ble High Court had passed an order on 21.12.2023 dismissing the time extension petition filed by the plaintiff and the order was received. The Hon'ble High Court held that no extension was sought by this court and a report was called as to whether the Judgment of the Hon'ble High Court has been complied with or not.

11. Today when the case was called plaintiffs and defendants both are absent. Plaintiffs counsel submitted that he wants to get some certified copies of documents from trade mark registry and sought for adjournment. Plaintiffs already

had enough time to get those documents when Hon'ble High Court had fixed time limit of six months to dispose off the case. Plaintiffs failed to do so. Hon'ble High Court has also dismissed the petition seeking extension of time. Plaintiffs was granted time till 01.00 PM to appear and give evidence. Since plaintiffs failed to appear the suit is dismissed for default. As defendants are also not present there is no order as to cost.

*(Dictated to the Confidential Assistant, typed and transcribed by her, corrected and pronounced by me in open court on this the 22<sup>nd</sup> day of December, 2023).*

(Sd/-)  
Addl. District Judge -III

**APPENDIX :-**

**WITNESSES EXAMINED FOR THE PLAINTIFFS:- Nil.**

**WITNESSES EXAMINED FOR THE DEFENDANTS:- Nil.**

**EXHIBITS MARKED FOR THE PLAINTIFFS:- Nil.**

**EXHIBITS MARKED FOR THE DEFENDANTS:- Nil.**

(Sd/-)  
Addl. District Judge -III

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**Fair / Copy of Judgment**  
**in O.S.No.03/2022**  
**Dated: 22-12-2023**  
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