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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: April 24, 2009

Date of Order: April 29, 2009

+ OMP 209/2006

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Fiitjee Limited & Ors.

Through: Mr. Anil K. Khaware, Advocate

29.04.2009

...Petitioners

Versus

Surat Singh Virk & Anr.

Through : Mr. Navin Chawla and Mr. Sidhartha Sampath, Advocates

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This application under Section 9 of the Arbitration & Conciliation Act, 1996 has been made by the petitioners with following prayers:

- a. *direct the respondents to furnish the complete list of the students with enrollment forms, fee receipts, bank statements and other details to the applicants.*
- b. *allow the applicant to serve the students already enrolled with the respondents in the name of the applicants or using the name and brand of the applicants.*
- c. *direct the respondents to deposit Rs.75 lac as interim security pending the resolution of dispute by the learned Arbitrator.*
- d. *restrain the respondents from parting with knowhow, students, coursewares and fee collected from the students to any third party in any manner whatsoever or to any entity created by the respondents.*

- e. *direct the respondents that the premises where the franchisee center was being run can only be used for running franchise centre qua the already enrolled students in the name of applicants till 31st May 2007 and for no other purpose.*
- f. *restrain the respondents from passing off/ transferring the result of the students enrolled in the name of the petitioner in the respondent centre to any third party or in the name of any third party except in the name of petitioners and respondents.*
- g. *direct the respondents to furnish IIT-JEE Roll numbers of students enrolled with the respondents in the name of the applicants.*
- h. *pass any other order as may also be necessary and just in favour of the applicants and against the respondent in the circumstances of the case.*

2. A perusal of above prayers would show that most of the prayers made by the petitioners are in respect of collecting evidence from the respondents. The intent and purport of Section 9 is not to collect evidence but only to secure the subject matter of arbitration. As far as asking the respondent to deposit Rs.75 lac is concerned, I consider that the petitioners have not been able to prima facie show to this Court that the petitioners were liable to recover Rs.75 lac from respondents. The petitioners filed this petition in the year 2006, the petitioners had invoked the arbitration clause in August, 004. For almost one year, the petitioners even did not file their claim before the Arbitrator represent what was their claim. Under these circumstances, it cannot be said that the petitioners have prima facie case of claiming Rs.75 lac from the respondents to seek security for this amount.

3. The other prayers made by the petitioners are vague. The petitioners have not stated what was the knowhow and course, who was in possession of

this knowhow and was being imparted to third party. The prayer that the respondents be restrained from passing off the result of the students to any third party is also not tenable. The other prayers are in the nature of seeking evidence from the respondents. The petitioner can produce evidence before the Arbitrator in support of its claim. Section 9 cannot be used for securing the evidence. I find no force in this application. The application is hereby dismissed. No orders as to costs.

April 29, 2009
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SHIV NARAYAN DHINGRA J.