

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 30, 2016

+ **FAO 229/2015**

PICASSO DIGITAL MEDIA PVT LTD. Appellant

Through: **Mr. Gaurav Singh, Advocate**

Versus

**PICK-A-CENT EDUCATION AND CONSULTANCY
SERVICES PVT LTD & ORS. Respondents**

Through: **Mr. Chirag Jamwal, Advocate**

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

C.M.No. 12769/2015 (u/S 5 & 14 of The Limitation Act, 1963)

Delay is of 35 days in filing the accompanying appeal. The reason put forth for the delay occasioned is of appellant *bona fide* pursuing the remedies before a wrong forum. Sufficient cause is shown for the delay occasioned.

The application is allowed and delay of 35 days in filing the accompanying appeal is condoned.

Application is disposed of.

FAO 229/2015

1. Impugned order of 10th March, 2015, declines appellant's application under Section 9 of *The Arbitration and Conciliation Act, 1996* by holding that recourse to Section 11(6) of the aforesaid Act has been made by the respondent prior in time and so, in view of Section 42 of *The Arbitration and Conciliation Act, 1996*, the courts in Karnataka would have the jurisdiction.

2. At the hearing, learned counsel for appellant has drawn attention of this Court to a recent decision of Supreme Court in *State of West Bengal & ors. Vs. Associated Contractors* (2015) 1 SCC 32 to submit that the function under Section 11(6) of *The Arbitration and Conciliation Act, 1996* is an administrative one and so, application under Section 9 of the aforesaid Act, cannot be dismissed on the ground of lack of territorial jurisdiction.

3. Learned counsel for respondents supports the impugned order and submits that question as to whether the Court before whom an earlier application had been filed is the court of competent territorial jurisdiction has to be considered by that court itself and so, appellant's application under Section 9 of *The Arbitration and Conciliation Act, 1996* has been rightly dismissed by the impugned order.

4. To controvert the aforesaid stand, learned counsel for appellant submits that appellant has withdrawn petition under Section 11(6) of *The Arbitration and Conciliation Act, 1996* filed before the High Court of Karnataka.

5. At this stage, learned counsel for respondent has placed on record copy of 'Memo of Withdrawal' alongwith the order passed thereon by the High Court of Karnataka to show that it was not a simpliciter withdrawal but was a withdrawal with liberty to file appropriate proceedings before the competent judicial authority, as the agreement between the parties stood vitiated due to misrepresentation and suppression of actual facts. It is submitted that respondent has already resorted to the criminal proceedings qua the misrepresentation and suppression of facts by the appellants herein.

6. Upon hearing and on perusal of impugned order as well as documents on record, I find that Section 8 of the Agreement between the parties stood supplemented by the Memorandum of Understanding of 1st July, 2009, which was renewed on 5th October, 2013. It is so noted in paragraph No.8 of the impugned order. As per Clause 23 of Memorandum of Understanding of 1st July, 2009, the recourse to arbitration proceedings in case of dispute, has to be in the Delhi Courts. It is no longer *res integra* that the function under Section 11 of *The Arbitration and Conciliation Act, 1996*, is an administrative one. In the considered opinion of this Court, the trial court has gravely erred in ignoring the legal position, as reiterated by the Apex Court in *State of West Bengal (supra)*.

7. Consequently, the impugned order is set aside and trial court is directed to decide appellant's application under Section 9 of *The Arbitration and Conciliation Act, 1996* on merits. It is made clear that if parties volunteer to explore possibility of mediation before the trial court

in the first instance, then trial court shall permit the parties to have recourse to mediation. Parties are directed to appear before the trial court on 19th September, 2016.

8. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 30, 2016

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