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

+ C.R.P. 166/2017 & CM No.26923/2017 (for stay)

JPJ GYANDEEP ACADEMY Petitioner

Through: Mr. Ajai Prakash Srivastava, Adv.

Versus

HCL LEARNING LTD Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.07.2017**

1. This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 12th May, 2017 in Civil Suit No.51633/2016 of the Court of Civil Judge, South East District, Saket Courts, New Delhi filed by the respondent against the petitioner for recovery of Rs.1,62,480/-] of dismissal of the application of the petitioner / defendant under Order VII Rule 11 of the CPC.

2. Dismissal of the suit was/is sought on the plea of Clause 13 of the agreement between the parties as under:

“13.DISPUTE RESOLUTION BY MEDIATION AND GOVERNING LAW

- a) If any dispute arises between the Parties hereto during the subsistence of this ACO or thereafter, in connection with or arising out of the validity, interpretation, implementation or alleged breach of any provision of this ACO or regarding a question, including the question as to whether the termination of this ACO by one Party hereto has been legitimate, the Parties hereto shall endeavor to settle such dispute amicably fifteen (15) days through mediation by the any authorized representatives of the respective Parties.

- b) This ACO shall be governed by laws of India. Subject to clause 13(a), the Parties shall submit any disputes arising out of or pertaining to this ACO to the exclusive jurisdiction of New Delhi.
- c) The provisions of this clause shall survive the termination of this ACO.”

3. It was / is the contention of the counsel for the petitioner / defendant that the parties having agreed to settle the disputes amicably through mediation by authorized representatives of the respective parties, the suit filed without resorting to said mediation is barred by agreement.

4. The petitioner / defendant though challenging the order of dismissal of its application under Order VII Rule 11 CPC has neither filed along with this petition a copy of the plaint nor a copy of the agreement. The Clause on which reliance is placed only has been set out in the memorandum of petition.

5. The counsel for the petitioner / defendant upon being asked has pulled out a single sheet from his file purportedly being part of the agreement and containing the clause aforesaid.

6. If the petitioner / defendant wants this Court to appreciate whether the order of the Trial Court is in accordance with law or not and whether any ground for interference under Section 115 is made out, it is incumbent upon the petitioner / defendant to file copies of the relevant records of the Trial Court and without which the challenge if any cannot be appreciated. Handing over copy of one sheet of the agreement, without the full agreement, also serves no purpose.

7. The counsel for the petitioner has then handed over a bunch of papers which also are not in seriatim and from which it cannot be deciphered as to from which page thereof the agreement relied upon is commencing. All that can be deciphered is that the respondent / plaintiff had entered into the agreement with the petitioner / defendant to provide to the petitioner / defendant the hardware and knowledge bank of the respondent / plaintiff for the consideration set out therein and it appears that the suit is for recovery of the arrears of the said consideration.

8. I have enquired from the counsel for the petitioner / defendant as to whether the petitioner / defendant at least after coming to know of the institution of the suit, has taken any steps for mediation and if so what. From the paper book, it transpires that the suit, from which this petition arises, was instituted way back on 28th August, 2015 and has been pending for nearly two years.

9. The counsel for the petitioner / defendant instead of informing of steps if any taken, states that an application was filed before the Trial Court in this regard.

10. The learned Trial Court in the impugned order has rightly observed that such a clause cannot be a bar to the very institution of the suit and the application under Order VII Rule 11 was misconceived.

11. An agreement in restraint of legal proceedings is void and unenforceable as per Section 28 of the Indian Contract Act, 1872.

12. Supreme Court in *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)* (2008) 2 SCC 728 has held that even in case of ejectment of tenant after determination of tenancy, once the suit has been pending for more than 15 days, the defect of non-service of notice of termination of tenancy loses its significance inasmuch as institution of the suit is itself a notice of termination of the tenancy and the requirement of 15 days notice is served.

13. In the present case, if at all the petitioner / defendant was desirous of any mediation, it was always open to the petitioner / defendant to, after service of summons of the suit, take steps in that regard and which has not been done. It is quite clear that the intention of the petitioner / defendant is not to resort to any mediation but to delay the adjudication of the claims. The counsel for the petitioner / defendant upon being asked as to what is the proposal of the petitioner / defendant for settlement, states that the petitioner / defendant wants to settle in terms of the agreement. On being asked what is the due as per the agreement, the counsel for the petitioner / defendant states that according to the petitioner / defendant, Rs.20,000/- is due to the respondent / plaintiff. However, on further enquiry whether the said amount has been paid, the reply is again in the negative.

14. This petition is thoroughly misconceived, as is the application against the order of dismissal whereof this has been preferred, and is dismissed with costs of Rs.20,000/- on the petitioner / defendant payable by the petitioner / defendant to the respondent / plaintiff before the Trial Court on the next date of hearing, as a condition to the petitioner / defendant contesting the suit further.

15. The petitioner / defendant having admitted liability in the sum of Rs.20,000/-, is also directed to, besides the costs aforesaid, pay the said amount of Rs.20,000/- to the respondent / plaintiff on the next date of hearing.

16. A copy of this order be forwarded to the Trial Court for ensuring compliance.

RAJIV SAHAI ENDLAW, J

JULY 31, 2017

‘gsr’..