

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

+ **RFA No.701/2017**

% **4th August, 2017**

RAJESH SHARMA Appellant

Through: Mr. Vijay K. Gupta, Advocate
with Mr. Mehul Gupta,
Advocate.

versus

M/S. FIITJEE LIMITED Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.27913/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.701/2017

2. This first appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed by the plaintiff in the suit impugning the order of the trial court dated 28.4.2017 whereby the trial court has dismissed the suit in view of an application under Sections 5 and 8 of the Act filed by the

respondent/defendant, and the trial court has accordingly held that in view of the arbitration clause between the parties, the suit was not maintainable.

3. The subject suit filed by the appellant/plaintiff is a suit for recovery of Rs. 44.83 lacs along with interest pleading that various service dues of the appellant/plaintiff were not paid by the respondent/defendant/employer. The details with respect to the service dues falling under the heads of salary, gratuity, benevolent and sincerity funds, leave travel allowances are stated in para 17 of the plaint which totals to an amount of Rs.32,99,651/-. The balance amount totaling to the suit amount of Rs 44.83 lacs is the claim of the appellant/plaintiff towards interest.

4. Admittedly, the parties were governed by the Service Manual of the respondent/defendant/employer and this Service Manual contains Clause 23(a), and which Clause 23(a) which reads as under:-

“Clause 23(a) **All disputes & differences of any nature** with regard to the FIITJEE service manual and the interpretation & adjudication of clauses and **claims** respectively shall be referred to the Sole Arbitrator appointed by the Company i.e. FIITJEE Ltd. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and statutory modification thereof & rules made

thereunder. The award of arbitrator shall be final & binding on both the parties. The award of arbitrator shall be final & binding on every matter arising hereunder. It is further agreed that inspite of the fact that the sole arbitrator may be known to any of the Directors or share holder and that he may have been dealing with the Company or had occasion to deal with any matter of this agreement shall not disqualify him. The Arbitrator may have expressed opinion in similar matter earlier shall also not render him disqualified. The venue of the arbitration shall be Delhi/New Delhi only.”
(emphasis added)

5. It is seen from the aforesaid Clause 23(a) that all claims of the employee with the employer and all disputes and differences with respect to the service claims have to be referred to arbitration. I therefore cannot agree with the argument urged on behalf of the appellant/plaintiff that disputes which are subject matter of the suit are not covered under the subject Clause 23(a). Also, if the appellant/plaintiff contends that disputes whether or not the subject matter of arbitration have to be decided by the court, then, this argument is to be rejected as *prima facie* it is seen that disputes are covered under arbitration Clause 23(a) and even if any issue on this aspect remains, then the appellant/plaintiff has sufficient remedy under Section 16 of the Act whenever arbitration proceedings would be initiated on such disputes if they arise to maintainability of the arbitration claim. Of course, I may note that in fact this argument under Section 16 of the Act is not available to the appellant/plaintiff in

view of the categorical and exhaustive language of Clause 23(a) which is reproduced above.

6. As per Section 14(2) of the Specific Relief Act, 1963, whenever there is any arbitration clause, a suit filed with respect to the rights which have to be adjudicated by arbitration is barred. Section 14(2) of the Specific Relief Act reads as under:-

“Section 14.Contracts not specifically enforceable.-(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.”

7. In view of the above discussion, there is no illegality in the impugned order inasmuch as the suit has been dismissed and parties have been referred to arbitration.

8. Dismissed.

AUGUST 04, 2017
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VALMIKI J. MEHTA, J