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

+ **FAO(OS) (COMM) 167/2017**

Date of decision: 7th September, 2017

METIS EDUVENTURES PRIVATE LIMITED..... Appellant

Through: Mr. Amit Sibal, Sr. Advocate
with Mr. Mani Gupta, Mr. Rajat Kumar, Mr.
Sashidhar S, Ms. Aishwarya Wabh, Mr.
Aditya Gupta & Mr. Tahir Ashraf Siddiqui,
Advocates

versus

K.D CAMPUS PRIVATE LIMITED & ORS..... Respondents

Through: Mr. C M Chander Lall, Sr.
Advocate with Ms.
Rajeshwari & Mr. Tahir
Advocates

FAO(OS) (COMM) 168/2017

NEERAJ KUKREJA & ORS Appellants

Through: Mr. Dayan Krishnan, Sr.
Advocate with Mr. Sanjeev Seshadri, Ms.
Aakash Lodha, Mr. Vaibhav Srivastava & Mr.
Harsh Parashar, Advocates
versus

K D CAMPUS PRIVATE LIMITED & ORS.... Respondents

Through: Mr. C M ChanderLall, Sr.
Advocate with Ms. Rajeshwari& Mr. Tahir,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

Intra Court Appeal,FAO (OS)(COMM.)/168/2017 by Metis Eduventures Private Limited and FAO (OS)(COMM)167/2017, by Neeraj Kukreja, Harvinder Kumar, Dheeraj Singh, Rahul Bainsla, Prateek Chaturvedi, impugn the common order dated 24th August, 2017 passed by the Single Judge in IA 8356/2017 under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 ('*Code*' for short), in suit No. CS (COMM) 485/2017 filed by M/S K.D. Campus Private Limited for mandatory and permanent injunction, restraint etc.etc.

2. The aforesaid suit had come up for hearing for the first time before the Single Judge on 26thJuly, 2017. Appellant, Metis Eduventures Private Limited was present in the Court on the said date of hearing to oppose the suit and grant of injunction. On 26th July, 2017, the following order was passed:-

*“CS(COMM) 485/2017 and I.A. No. 8356/2017
(under Order XXXIX Rule 1 and 2 CPC)*

- 1. Plaint be registered as a suit.*
- 2. Issue summons in the suit and notice in the application to the defendant Nos. 2 to 8 on the*

plaintiff taking steps through ordinary and dasti process and all other modes including email, returnable on 24th August, 2017.

- 3. Learned counsel for defendant No. 1 accepts summons in the suit and notice in the application. Written statement to the suit be filed within the statutory period and reply affidavit to the application be filed within four weeks.*
- 4. Learned counsel for the plaintiff prays for an ad-interim ex-parte relief against the defendants at least till the conclusion of the schedule programme.*
- 5. A perusal of the plaint reveals that the SSC Preliminary Exams are scheduled to take place on 1st August, 2017 and all the courses of the students for the said batch were to conclude on or before July end/early August, 2017. Month of July coming to an end, this Court finds no ground to pass any ad-interim ex-parte injunction at this stage.*

3. It is the case of Metis Eduventures Private Limited that they had written a letter to the counsel for K.D. Campus Private Limited seeking copy of the paper-book. The said paper-book was furnished on 1st August, 2017. Accordingly, the statutory time to file written statement and reply to the application for injunction within four weeks as granted vide order dated 26th July, 2017 would begin from 1st August, 2017.

4. It is the case of the appellants in FAO(OS)(COMM) 168/2017 that they were served with the summons in the suit and notice in the

application sometimes on 22nd August, 2017, except Neeraj Kukreja who was served on 20th August, 2017.

5. The grievance of the appellant - Metis Eduventures Private Limited is that even when the time for filing the reply and written statement as granted by order dated 26th July, 2017 had not expired, on 24th August, 2017 the following interim injunction order was passed :-

“IA 8356/2017 (u/oXXXIX R 1 & 2 CPC)

Considering the memorandums of understanding dated 25th August, 2015, 10th August, 2016, 1st July, 2016, 8th July, 2016 and 21st May, 2016 entered into between the plaintiff and defendant Nos. 2 to 6 respectively whereby they have agreed not to give private tuitions to any student whether of the plaintiff's coaching institute or any other coaching institute nor be interested in any other coaching institute unless otherwise expressly permitted, till the next date of hearing defendant Nos. 2 to 6 are restrained from imparting private tuitions to any student of the plaintiff's coaching institute or any other coaching institute. However, this injunction order would not be a restrain on the defendant Nos. 2 to 6 to teach students who are neither enrolled with the plaintiff's institute or any other coaching institute.”

6. The contention of Metis Eduventures Private Limited is that though this injunction order is not against them, as defendant nos. 2 to 6, the appellants in FAO(OS)(COMM) 168/2017, are working with them,said order would operate squarely against them, for it restrains

the said defendants from imparting tuitions at the appellant's institute. It is submitted that the said appellant was taken by surprise and denied their right to contest grant of injunction. Their pleas and contentions were never examined and considered.

7. It is submitted that number of issues and contentions arise for consideration and therefore, those questions were required to be adjudicated and decided before it is held that an interim injunction order should be passed. It is highlighted that the injunction order does not give any reason or ground as to why it was being passed.

8. Our attention is also drawn to the order passed in CS(COMM) 485/2017, on 24th August, 2017 which records:-

“CS(COMM) 485/2017

Defendants No. 1,2,3 & 7 have been served. Service report qua defendant Nos. 4 to 6 is awaited. Defendant No. 8 is unserved as no such person resides.

Learned counsel for the defendant N. 1 who had accepted summons on 26th July, 2017 states that the copy of the paper book and plaint were given belatedly and she would file the written statement in the statutory period. No one appears on behalf of the defendant No.2, 3 & 7 who have been served.”

9. Learned counsel for the K.D. Campus Private Limited on the other hand submits that the impugned order dated 24th August, 2017 is justified in equity and in law. Reliance is placed upon the judgement

of the Supreme Court in *Niranjan Shankar Golikari Vs. Century Spinning and Manufacturing Company Limited AIR 1967 SC 1098*.

He submits that the appellants in FAO(OS)(COMM) 168/2017 had not entered appearance and opposed the application on 24th August, 2017. Similarly, the appellant - Metis Eduventures Private Limited had failed to file their reply or written statement. It is highlighted that even today, Metis Eduventures Private Limited has not filed their written statement or reply to the interim application.

10. We have considered the said contentions raised by the two sets of appellants and respondents. We had also heard the parties on merits of the issues which would arise for consideration in the suit as well as the application for injunction. We feel that the issues which arise would require consideration and examination in detail. We would refrain and not go into the said aspects as these matters must be first considered and decided by the Single Judge before whom the application for injunction is still pending.

11. However, we feel that the injunction order passed on 24th August, 2017 should be set aside and should not be enforced, till different facets, both legal and factual, are considered and decided. We would elaborate and give our reasons.

12. On the first date, when the suit and the interim application had come up for hearing on 24th July, 2017, no injunction order was passed. The direction was given to serve the appellants in FAO(OS)(COMM) 168/2017, who were served on 20th and 22nd August, 2017 respectively. They hardly had time to file written statement and reply and contest the prayer.

13. It is correct that the said appellants had not entered appearance before the Single Judge on 24th August, 2017, however, they were not proceeded against *ex-parte*. Possibly as some of the said appellants were served recently, and service reports of others were awaited. Moreover, the restraint order passed by the Single Judge has a direct adverse impact and affect on Metis Eduventures Private Limited, who had entered appearance and whose time to file written statement as well as the reply to the application for injunction had not expired. They still had time to file pleadings and defend their stand and stance.

14. We are aware that Metis Eduventures Private Limited has not filed their reply or written statement. Similarly, the appellants in FAO(OS)(COMM) 168/2017 have not filed their written statement and reply. The contention of the counsel of the appellants is that they have disclosed and stated their entire defence in the appeals. Their entire defence and pleas it is apparent have been raised.

15. Learned counsel for the appellants, on instructions, states that they would be filling the written statement and reply to the interim injunction application within one week. Counsel appearing for K.D. Campus Private Limited, on instructions, states that replication and rejoinder would be filed within one week of the service of the written statement and reply.

16. The next date in terms of the order dated 24th August, 2017 is 31st October, 2017 before the Registrar for completion of service/pleadings and admission/denial of documents. As we have vacated the interim stay granted vide restraint order dated 24th August, 2017 by this order, we would direct that the suit and the application

may be listed before the Single Judge on 27th September, 2017 when an appropriate date of hearing will be fixed.

17. Counsel for the parties state that they would request the Learned Single Judge to fix any early date of hearing.

18. We have deliberately not made any comments on the points in issue on merits in these appeals, lest it causes prejudice to any party. These have not been examined and elucidated by the Learned Single Judge. Any comment or observation on this order would not be treated as finding of this court. Learned Single Judge would examine the prayer made by the respondent and the opposition put up by the appellants without being influenced by this order or by the fact that we have vacated and set aside the restraint order dated 24th of August, 2017.

19. The appeals are disposed of, without any order as to costs.

Dasti.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

SEPTEMBER 07, 2017/P