

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

+ **FAO No. 417/2017**

% **30th October, 2017**

+ **FAO No. 417/2017**

M/S HCL LEARNING LTD. Appellant
Through: Mr. Anuj Kumar and Mr. Rishabh
Mehta, Advs.

versus

M/S SADHNA TALENT SCHOOL Respondent

+ **FAO No. 418/2017**

M/S. HCL LEARNING LTD. Appellant
Through: Mr. Anuj Kumar and Mr. Rishabh
Mehta, Advs.

versus

ST. THOMAS SCHOOL Respondent

+ **FAO No. 419/2017**

M/S HCL LEARNING LTD. Appellant
Through: Mr. Anuj Kumar and Mr. Rishabh
Mehta, Advs.

versus

M/S ORIENTAL FAIRFIELD SCHOOL Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. All these appeals arise out of a similar impugned order passed by the trial court dismissing the suits as not maintainable. For the

sake of convenience the impugned order of 10.8.2017 challenged in FAO

No. 417/2017 is referred below:-

“10.08.2017

Present: Sh. Rishab Mehta, Ld. Counsel for the plaintiff.

Publication report has been filed by the Ld. Counsel for the plaintiff wherein it is reported that the defendant has been served by way of publication in the newspaper titled as “The Hindu” dated 26.04.2017. Today, none has appeared on behalf of the defendant.

Record of the file perused. On perusal of the agreement-cum-order (ACO), it has transpired that the plaintiff has not complied within the provision of clause 13 of the aforesaid agreement-cum-order (ACO) which is reproduced as under:

(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 endeavour to settle such dispute amicably fifteen 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

From the perusal of the aforesaid, it is crystal clear that the plaintiff was first required to make endeavour to settle the present dispute amicably within 15 days through Mediation. However, judicial record shows that the plaintiff has not made any endeavour for Mediation as per clause 13(a) of the agreement-cum-order, and has straightway issued a payment demand notice-cum-termination notice.

In the light of aforesaid, it is noticed that the plaintiff has not complied with clause 13(a) of the ACO and the provisions of clause (b) and (c) comes into picture only after clause (a) is complied. Thus the plaint of the plaintiff is returned being pre-mature for non-compliance of clause 13(a) of the aforesaid ACO on which the plaintiff has based its case.

File be consigned to records after due compliance.”

2. It is therefore seen that by the impugned orders the suits have been dismissed as not maintainable because of the

appellant/plaintiff not complying with a Clause with respect to holding of mediation proceedings prior to filing of the suit.

3. I have had an occasion to consider this aspect in the judgment in the case of ***Ravindra Kumar Verma Vs. M/s BPTP Ltd. & Anr. 2015(1) RLR 624; 2015 (147) DRJ 175*** and I have held that existence of a Clause for holding of mutual discussions or conciliation etc is not a bar from filing of a suit or filing of arbitration proceedings under Section 11 of the Arbitration and Conciliation Act inasmuch as such a Clause should be read to only contain a directory requirement and not a mandatory requirement and it was held that entering into conciliation or mediation proceedings, even if a contractual clause provides for the same, is not a mandatory pre-condition required for the suit to be maintainable.

4. Applying the ratio of the judgment in the case of ***Ravindra Kumar Verma (supra)*** these appeals are allowed. It is noted that the impugned orders have been passed either when the defendant in the suit was not served or in one case was served by publication but had not appeared.

5. Appeals are accordingly allowed in terms of the aforesaid observations.

6. Appellant to appear before the District and Sessions Judge, South East, Saket Courts, New Delhi on 21.11.2017 and the District and Sessions Judge will now mark the suits for disposal to a competent court in accordance with law.

OCTOBER 30, 2017/ib

VALMIKI J. MEHTA, J