

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

+ **RFA No. 44/2019**

% **21<sup>st</sup> January, 2019**

INTEGRATED MANAGEMENT COLLEGE ..... Appellant

Through: Mr. Manuj Kumar Garg,  
Advocate.

versus

MANAS RAIZADA ..... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. Appl. No. 2469/2019 (for exemption)**

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

**RFA No. 44/2019 and C.M. Appl. No. 2468/2019 (for stay)**

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the trial court dated 24.09.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff/

student for a sum of Rs. 6,88,600/- along with interest at 9% per annum on account of appellant/defendant/institute closing midway in the two-year course of Higher National Diploma (*hereinafter* 'HND Programme') for EDEXCEL International and in this course, the respondent/plaintiff had completed one year of studies.

3(i). The facts of the case are that the respondent/plaintiff filed the subject suit pleading that he was originally enrolled with the B.Sc. course with appellant/defendant/institute but thereafter the respondent/plaintiff was allowed to change his course to the two-year course of HND Programme for EDEXCEL International, which was recognized by British Council, India and Government of U.K. For change of the course, the respondent/plaintiff completed all formalities as required by the appellant's/defendant's/institute's Admission Letter dated 11.11.2011. The HND Programme was to be conducted in the main campus of the appellant/defendant/institute. The respondent/plaintiff deposited fees for the course on 19.01.2012. The earlier deposited fees of Rs. 75,000/- for the B.Sc. course was adjusted by the appellant/defendant/institute as fees for the new HND Programme. The appellant/defendant/institute, thereafter, shifted to a new address which came to be known as Centre for Advance Computing (COAC).

When the respondent/plaintiff returned from his Dussehra holidays on 26.10.2012, it was found that the appellant/defendant/institute was shutting down the institute by November, 2012. The appellant/defendant/institute expressed its willingness to refund the course fees and the amount spent on rented accommodation and instead offered an alternative course which was not identical to the HND Programme in another institute such as Frame Boxx and C.G. Mantra, however, the respondent/plaintiff could not join the alternative course because the alternative course did not offer the same subjects and syllabus which was taught in the HND Programme and the same was also recognized by the British Council, India.

3(ii). On account of the appellant/defendant/institute being shut down in November, 2012, the respondent/plaintiff returned to his home at Kanpur. Surprisingly, however, on 22.08.2013 the respondent/plaintiff was telephonically called to submit an assignment in Delhi without the appellant/defendant/institute having imparted the necessary classes for the HND Programme. Ultimately, the respondent/plaintiff issued a Legal Notice dated 24.12.2014 demanding a sum of Rs. 7,83,180/- along with interest, and as this demand was not complied with, the subject suit was filed.

4. The appellant/defendant/institute contested the suit. The appellant/defendant/institute did not dispute that the respondent/plaintiff was admitted to the two-year HND Programme. It was also admitted that the course was shut down in November, 2012 being financial unviable. It was also stated that respondent/plaintiff had the paid the course fees for one year. It was also admitted that the respondent/plaintiff was given an option to shift to another institute. It was also claimed that the appellant/defendant/institute entered into a service agreement with one faculty member, Mr. Suhail, so that the respondent/defendant could complete the course. The appellant/defendant/institute admitted the receipt of registration fee of Rs. 5600/-, fees of Rs. 75,000/- which was adjusted from the B.Sc. course to the present HND Programme for the respondent/plaintiff, and two further payments of Rs. 20,000/- each made by the respondent/plaintiff for the concerned HND Programme. The appellant/defendant/institute also admitted that the HND Programme was a unique course recognized by the British Council, India, and the Government of U.K. It was further stated that the subject to the completion of the terms and conditions of completion of the course, a

certificate was to be awarded but the same could not be done in the present case.

5. The trial court framed the following issues:

- “1. Whether plaintiff is entitled to recovery of the suit amount?  
OPP
2. Whether plaintiff is entitled to any interest on the suit amount, if yes, at what rate and for which period? OPP
3. Relief.”

6. The documents admitted during the course of admission/denial and the evidence led by the parties are mentioned and discussed in paras 8, 10 and 11 of the impugned judgment, and these paras read as under:

“8. During admission denial, the defendant admitted the following documents filed by the plaintiff.

Ex.P-1 (Ex.PW-1/4) is the prospectus.

Ex.P-2 is also the prospectus.

Ex.P-3 (Ex.PW-1/3) is admission letter dated 11.11.2011.

Ex.P-4 (Ex.PW-1/1) is the receipt for a sum of Rs. 5600/- dated 21.06.2011.

Ex.PW-1/2 is the receipt for a sum of Rs. 75,000/- dated 07.07.2011.

Ex.PW-1/5 is the receipt for a sum of Rs. 20,000/- dated 19.01.2012.

Ex.P-5 (Ex.PW-2/1) is the notice dated 23.04.2014 sent by the father of the plaintiff to the defendant.

Ex.P-6 (Ex.PW-2/2) is the reply sent by the defendant dated 05.08.2014 to the legal notice Ex.P-5.

Ex.P-7 (Ex PW-1/6) is the legal notice dated 24.12.2014 sent by the plaintiff to the defendant officials.

Ex.P-8 ( Ex.PW-1/7) are the postal receipts.

Ex.P-9 (Ex.PW-1/8) (colly) is the acknowledgement of the post office.

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10. During **plaintiff evidence**, plaintiff examined two witnesses **PW-1 Sh. Manas Raizada** tendered his affidavit as Ex.PW1/A and relied upon the documents Ex.PW1/1 to Ex. PW1/8. **PW-2 Sh.Sunil Srivastava** tendered his affidavit Ex.PW2/A.

11. During **Defendant evidence**, defendant examined two witness **DW-1 Sh. Gokul Jha** who tendered his affidavit as Ex.DW-1/A and relied upon the document Ex.D/1 (Mark A). Defendant further examined **DW-2 Sh. Hari Mohan** who tendered his affidavit as Ex.DW- 2/A.”

7. In my opinion, the trial court has committed no error in decreeing the suit because admittedly the appellant/defendant/institute stopped the HND Programme only after one year without completing the same i.e. the required two-year course. The trial court has rightly observed that though the respondent/plaintiff was offered to be transferred to another institute, the respondent/plaintiff rightly refused transfer to an alternative institute as the alternative course in a different institute did not have an identical status as the HND Programme Certificate which was recognized by the British Council, Indian and the Government of U.K. The trial court has rightly reasoned that each course has its recognition and reputation and

shifting the students to another course does not compensate for the loss from the earlier course. The trial court has further observed that educational institutions should not be business enterprises and precious years of it's students life cannot be allowed to be sacrificed at the altar of profitability of an educational institute. Accordingly, the trial court directed the refund of the fees and other charges paid by the respondent/plaintiff to the appellant/defendant/institute totaling to Rs. 1,20,600/-. The trial court has further rightly directed refund of the hostel charges which were actually rental charges paid by the respondent/plaintiff during the period of his first year stay at Delhi for completing the first year of the two-year course.

8. So far as the charges towards harassment, trauma and loss of opportunity is concerned, the trial court has rightly held and reasoned that no amount is enough to compensate for the loss of time and there is no scientific formulae to compute the quantum of loss and therefore the trial court estimated that the respondent/plaintiff would have earned around Rs. 20,000/- per month, and this amount for two years totaling to Rs. 4,80,000/- was hence decreed in favour of the respondent/plaintiff by making the following observations:

“18. Coming to the question of mental trauma and harassment suffered by the plaintiff, the plaintiff as well as his parents have suffered a big mental trauma. Student life is the most crucial phase of anyone's life. It provides the foundation upon which the whole edifice of one's personality is built. The mistakes and shortcoming in this phase has a cascading effect on the next phases of life. Wastage of one and a half precious years and in fact, two years on account of the dis-continuance of the course lead to great mental harassment. No amount is enough to compensate for the lost time. Time is money, is precious and is limited. Though there is no scientific formula to compute the quantum of loss suffered by the plaintiff but some objective determination is required to be made to the extent possible. The plaintiff was enrolled for diploma in animation. Had the said diploma been completed, by a conservative estimate, he could have earned a minimum of Rs. 20,000/- per month either in a regular job or a freelancer. Plaintiff was pushed back by a period of two years. Since the plaintiff was forced to leave in the middle of the second year, therefore, it can be safely said that plaintiff has suffered a loss of around Rs. 20,000/- per month for a period of two years. Therefore, the opportunity costs in the present case turns out to be roughly Rs. 4,80,000/- coupled with costs of Rs. 20,000/- for the purpose of compensating the plaintiff for the mental torture and harassment which the plaintiff suffered at the hands of the defendant. Therefore, considering the totality of facts and circumstance, plaintiff is entitled to compensation of Rs. 5,00,000/- on this count. This issue is accordingly decided in favour of the plaintiff and against the defendant.”

(Underlining Added)

9. The ld. counsel for the appellant/defendant/institute argued that the appellant/defendant/institute had engaged a faculty member Mr. Suhail to complete the course, however I fail to understand this argument because if no classes are held, and which surely would have been a requirement on the basis of which the

British Council, India and the Government of U.K. would have given recognition to the subject courses, therefore, it cannot be argued by the appellant/defendant/institute that the course will be continued for the students on the internet. Also, it is seen that it was only on 22.08.2013 that the respondent/plaintiff was telephonically called to submit the assignment in Delhi and the same was without imparting the necessary classes. Also, in my opinion, the argument of the appellant/defendant/institute that alternative courses were offered is liable to be rejected because it has not been established on record that the course of the alternative institute had an identical status and same recognition as was offered by the appellant/defendant/institute under the HND Programme.

10. In view of the aforesaid discussion, there is no merit in this appeal. Dismissed.

**JANUARY 21, 2019**

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**VALMIKI J. MEHTA, J**