

CR-7570-2018 (O&M)

294

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7570-2018 (O&M)

Date of decision: April 18, 2023

Khushi Malik and another

....Petitioners

versus

Modern Vidya Niketan School

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rajvinder Singh Bains, Senior Advocate with
Mr. Amarjeet, Advocate for petitioners.Mr. Aashish Chopra, Senior Advocate with
Mr. Gagandeep Singh, Advocate for respondent.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 20.09.2018 passed by learned Civil Judge (Junior Division), Faridabad whereby application filed by petitioner/defendants under Order VII Rule 11 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') for rejection of plaint filed by respondent/plaintiff, was dismissed.

2. Learned Senior counsel for petitioners would contend that respondent-School filed Civil Suit for recovery of Rs.3,03,027/- along with due/ balance during pendency of suit, against petitioner/defendants, on the ground that plaintiff/School is a private unaided Senior Secondary School established by Modern Vidya Niketan Society which is affiliated to Central Board of Secondary Education (CBSE). Petitioner No.1 is daughter of petitioner No.2 and was studying in the School of respondent. Suit was based on the claim that since academic year 2012-2013 till 2017-2018, petitioners did not pay fees in accordance with bills rendered by respondent/plaintiff, fee of Rs.3,03,027/- was payable by the petitioners.

2.1. He would further contend that in the year 2016, certain students through their parents filed suit for permanent and mandatory injunction against St. John's

CR-7570-2018 (O&M)

School for not charging illegal amount under the head annual charges, computer fees and maintenance fund etc. and that School filed an application under Order VI Rule 11 of CPC for rejection of plaint on the ground that jurisdiction of Civil Court is barred under Section 22 of the Haryana Education Act, 1995 (for short 'Act of 1995'); and secondly, students having alternative remedy to redress their grievance under Rules 158-A and 158-B of the Haryana Education Rules, 2003 (for short 'Rules of 2003') by approaching the Fee and Fund Regulatory Committee. Said application was dismissed on 12.08.2016.

2.2. Further contends that aforesaid School approached this Court by way of CR-5767-2016, which was dismissed vide common order dated 24.09.2016 passed in CR-3553-2016 and it was held that jurisdiction of Civil Court is barred by Section 22 of the Act of 1995. He contends that Civil Suit filed by respondent/ plaintiff is liable to be rejected.

3. On the other hand, learned Senior counsel for respondent opposes the petition and prays for dismissal of the same.

4. I have heard learned counsel for the parties and gone through the record.

5. Learned Senior counsel for petitioners has drawn my attention to Order dated 20.07.2022 passed by a Coordinate Bench of this Court presided over by Anil Kshetarpal, J. stating that vide CR-3297-2021 along with connected cases, while dismissing the revisions, School was permitted to continue with recovery proceedings instituted against parents of wards who have defaulted in making payment of the School fees, *inter alia* on the defence that hike was not justified. For reference, relevant of aforesaid order is reproduced herein below:

“Ordinarily, this Court would have referred the matter for re-examination to a larger Bench, however, learned counsel representing the respondents has brought the attention of the Court to the order passed by the Hon'ble Supreme Court of India in SLP (C) No.8544 of 2022 which has been filed assailing the correctness of the judgment passed by in Apeejay School's case (supra) on 13.05.2022, which reads as under :-

“Learned counsel for the petitioner submits that Rule 158 A of the Haryana School Education Rules, 2003 as amended on

28.01.2014 do not provide for a remedy of recovery in respect of fee of the school.

Issue notice.

On the issue of interim relief, learned counsel for the petitioner submits that the apprehension is that there are similar other cases pending and based on the impugned judgment those appeals may also be rejected.

In view thereof, we direct that the impugned judgment will not have effect of law qua other cases till we consider these matters.”

It is evident that the Supreme Court, while issuing notice, has directed that the impugned judgment shall not have effect of law qua the pending cases till the matter is decided by the Supreme Court.

It is well settled that the jurisdiction of Civil Court to decide a civil dispute is plenary. The provisions excluding the jurisdiction of Civil Court are required to be strictly construed. On a careful reading of Section 22 of the Act, it is evident that the bar to the jurisdiction of the Civil Court is neither absolute nor omnipotent and there may be cases which may still be entertained by the Civil Courts including a suit filed by the school to recover fee from its students. The jurisdiction of Civil Court is excluded only in respect of the cases which strictly fall within the domain of the provisions of the Act. The Act covers the cases in which the Government or the Director or any other person authorized by the Government or the Director or any other officer or authority specified by or under this Act is empowered, in this regard, by or under the Act. While interpreting a statute, each word, phrase, punctuation mark has to be given complete and full meaning. As already noticed the jurisdiction of the Civil Court is plenary except where it has been specifically excluded by the statute and further, a proper alternative redressal forum has been provided under law. Once it is evident that Section 22 of the Act does not absolutely bar the jurisdiction of Civil Court, in such circumstances, the Court is required to scrutinize the facts of each case before finally opining on the question of exclusion of jurisdiction.

On a careful reading of the judgment passed in Apeejay School's case (supra), it is evident that the attention of the Bench was not drawn to sub rule (ii) of rule 158A of the Haryana School Education Rules, 2003 or due to an oversight, the Bench did not comprehend the scope of jurisdiction of the Fee and Fund Regulatory Committee constituted by the Government under the Rules.

Consequently, with highest respect, this Court expresses its inability to follow the interpretation in the case of Apeejay School's case (supra).

In these cases, the applications filed by the students for the rejection of plaint under Order 7 Rule 11 CPC has been correctly dismissed by the Civil Court.

Consequently, finding no merit, these revision petitions are dismissed.”

5.1. Similar is the position here where respondent-School has instituted recovery proceedings and parents of the wards have withheld the fee claiming that

CR-7570-2018 (O&M)

same is not justifiable. Be that as it may, it is not for this Court to comment whether or not hike is justifiable or not as same is subject matter of trial before Court below.

6. As regards maintainability, since Coordinate Bench has already observed that Rule 158-A of Rules of 2003 does not provide for any remedy for recovery of fees in respect of a student, therefore, same does not act as a bar for instituting recovery proceedings.

6.1. Per contra, my attention has also been drawn by learned Senior counsel appearing for petitioners that the question of maintainability of the suit being barred under Rule 158-A *ibid* is also *subjudice* in the Supreme Court vide SLP (C) No.8544 of 2022. The pendency of said SLP was duly taken note of by learned Coordinate Bench while permitting the School to continue with recovery proceedings. I see no grounds as to why recovery proceedings in the present case also be not permitted to continue, subject to outcome of pending SLP, in terms of aforesaid order dated 20.07.2022 *ibid*.

7. Impugned order dated 20.09.2018 is modified accordingly and the revision petition is thus disposed of. However, it is made clear that in case, suit is decreed in favour of plaintiffs, needless to say that right of recovery of decretal amount shall be subject to outcome of pending SLP.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 18, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No