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

% **Date of order: 3rd July, 2024.**

+ **C.R.P. 131/2024**

HIMANSHU SHARMA

.....Petitioner

Through: **Mr. Aditya aggarwal and Mr. Ankit
Mutreja, Advocates**

versus

FIIT JEE

.....Respondent

Through: **Ms. Priya, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner seeking setting aside of the order dated 11th March, 2024 (hereinafter "impugned order") passed by the learned Civil Judge, West District, Tis Hazari Courts, Delhi in civil suit bearing CS SCJ no. 1648/19.

2. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad in law and liable to be set aside since the learned Trial Court has failed to take into consideration the entire facts and circumstances of the instant case.



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3. It is submitted that on 2nd November, 2018, the petitioner had taken admission in the respondent i.e., FIIT JEE (hereinafter “respondent Centre”) and made a payment of a sum of Rs. 1,88,193/- towards fees.
4. It is further submitted that at the time of the admission, the petitioner was assured by the respondent Centre that in the event he is not satisfied with the services of the respondent Centre, he can request for a refund of the fees.
5. It is submitted that since the petitioner was dissatisfied with the services provided by the respondent Centre, he requested for a refund of the fees and denial of the same led the petitioner, i.e., the plaintiff to file the aforesaid civil suit before the learned Trial Court seeking a recovery of Rs. 1,88,193/- from the respondent, i.e., the defendant.
6. It is submitted that in the above said civil suit, the respondent filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter “the Act”) seeking reference of the dispute for arbitration in terms of the agreement executed among the parties.
7. It is submitted that whilst adjudicating upon the aforesaid application, the learned Trial Court dismissed the petitioner’s suit without taking into consideration the entirety of the matter as well as the arguments advanced by the counsel appearing on behalf of the petitioner therein.
8. It is submitted that while passing the impugned order, the learned Trial Court failed to appreciate that it is not only the arbitral clause that is invalid; rather the whole agreement is invalid, as the signatures of the petitioner and his father were taken fraudulently and dishonestly on multiple



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pages by the officials of the respondent Centre.

9. It is submitted that the aforesaid agreement is invalid and the said dispute is in the nature of a civil dispute, the issue in question of which can only be decided by the Court of civil jurisdiction irrespective of the arbitration clause.

10. It is also vehemently argued that certain judgments, which were placed before the learned Trial Court have not been properly considered. Learned counsel appearing on behalf of the petitioner, during the arguments, relied upon paragraph 14 of the judgment passed by this Court in the case of ***Vijay Vishwanath Talwar v. Mashreq Bank, PSC, 2003 SCC OnLine Del 962*** submitting to the effect that the entire agreement which has been signed by the parties is contrary to the law and therefore, the said agreement may be declared null and void.

11. It is submitted that the learned Trial Court failed to consider that a civil Court is bestowed upon the discretionary powers to refuse to refer a matter for arbitration if it is satisfied that the issue to be decided pertains to allegation of fraud or involves a complicated question of fact or law.

12. Learned counsel appearing on behalf of the petitioner further submitted that the reasons assigned by the learned Court below while deciding the application under Section 8 of the Act for rejecting the suit is illegal, being contrary to the settled position of law, therefore, the said impugned order is liable to be set aside.

13. In view of the foregoing submissions, it is submitted that the instant petition may be allowed, and the reliefs be granted as prayed for.



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14. *Per contra*, learned counsel appearing on behalf of the respondent Centre submitted that the impugned order passed by the learned Trial Court in the application under Section 8 of the Act does not suffer from any illegality and the learned Trial Court has rightly rejected the suit which is clearly barred under the said provision.

15. It is submitted that while passing the impugned order, the learned Trial Court has considered the entire facts and submissions made by the parties and arrived at the conclusion that the suit which was filed by the petitioner herein is barred under Section 8 of the Act.

16. Learned counsel for the respondent also pointed out that the provisions pertaining to the arbitration clause of the agreement has been duly signed by the petitioner herein, therefore, the same cannot be challenged at this stage.

17. Learned counsel appearing on behalf of the respondent Centre further submitted that the arguments advanced by the petitioner i.e., the entire agreement is illegal and contrary to the law which may be declared null and void does not hold ground as the agreement between the parties has been duly signed by the petitioner after perusing the entire contents made therein.

18. It is also submitted that in the event the aforesaid civil suit was adjudicated by the learned Trial Court, the same would be contrary to the provisions of the Act as well as against the legislative intent of Section 8 of the Act.

19. Therefore, in view of the foregoing submissions, it is submitted that the instant petition being devoid of any merits may be dismissed.



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20. Heard learned counsel appearing on behalf of the parties and perused the record.

21. At the outset, this Court deems it imperative to peruse the findings recorded by the learned Court below in the impugned order, relevant portion of which is as under:

“..6. The arbitration clause, whose validity has been disputed, inter alia, prescribes: “in the event of any dispute between the parties regarding the interpretation of clauses of enrollment form or any claim etc. arising out of taking admission in FIITJEE, the matter shall be referred to the sole arbitrator appointed by FIITJEE limited...”.

7. It is thus, an undisputed position that the arbitration clause, inter alia, prescribes for unilateral appointment of arbitrator. The limited issue which arises for effective disposal of the present application is whether in such circumstances the entire arbitration agreement is rendered void or whether the matter can still be referred for arbitration, subject to the compliance of the other ingredients envisaged u/s 8 of the Act.

10. Accordingly, as per the dictum cited above, the impermissible mode of appointment of arbitrator is to be segregated from the clause prescribing for arbitration. There is no gainsaying that the said segregation would not tantamount to ratification of the unilateral appointment of arbitrator, which has been specifically held to be impermissible as per Section 12(5) of the Act and its interpretation as done by the Hon'ble Supreme Court in Perkins (supra) case. This being the factual and legal position, the sole objection of the plaintiff as to the invalidity of the arbitration clause shall fall.

11. At this juncture, it would be expedient to record that the present suit pertains to the refund of the tuition fees, as the



plaintiff was dissatisfied with the services/education provided by the defendant institution. The said aspect has been duly covered by the agreement between the parties, specifically mentioned in clause no. 8 of the agreement. The said clause, inter alia, provides that if the student leaves the institution mid way before completing the full course for any reason whatsoever, he shall not be entitled for refund of fees. It can be safely concluded that the subject matter of the suit is same as that of the agreement containing the arbitration clause. Further, the applicant has filed the present application at first instance upon his appearance in the present suit and the present application is accompanied with certified copies.

12. Accordingly, this court is of the considered opinion that the present suit is not maintainable before this court, and the present dispute can be decided in the Arbitration proceeding. In view of the same, the present application u/s 8 of Arbitration and Conciliation Act, 1996 is allowed and present suit stands dismissed...”

22. Upon perusal of the aforementioned extracts of the impugned order, it can be summarily stated that whilst adjudicating the respondent’s application under Section 8 of the Act, the learned Tribunal had observed that the arbitration clause mentioned in the agreement signed between the parties states that any disagreement between the parties, including the interpretation of the enrollment form or any claims arising from admission to respondent Centre, will be referred to a sole arbitrator appointed by the respondent. It was held that the said arbitration clause, i.e., Clause 27 of the agreement, unilaterally appoints the arbitrator, raising the question as to whether this renders the entire arbitration agreement void or the arbitration can still proceed under Section 8 of the Act.



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23. It was observed by the learned Court below that according to the legal precedents with regard to the above issue in question, improper appointment of an arbitrator can be separated from the clause in the agreement in question, without validating the unilateral appointment, since the same is impermissible under Section 12(5) of the Act and as also interpreted by the Hon'ble Supreme Court.

24. It was held that the plaintiff's sole objection to the validity of the arbitration clause pertaining to the unilateral appointment which cannot be accepted. The learned Trial Court further stated that the aforesaid civil suit pertains to the refund of tuition fees due to dissatisfaction with services which is a matter covered by clause 8 of the agreement. Given that the subject matter of the suit aligns with the arbitration clause, the learned Trial Court accordingly concluded that the said civil suit is not maintainable and referred the dispute to arbitration. Consequently, the application under Section 8 of the Act was allowed and the suit was dismissed.

25. For proper adjudication of the instant revision petition, this Court has perused Clause 27 of the agreement which is signed by both the parties. The same has been reproduced herein below:

“....27. In the event of any dispute between the parties regarding the interpretation of clauses of enrolment form or any claim etc. arising out of taking admission in FIITJEE, the matter shall be referred to the Sole Arbitrator appointed by FIITJEE Ltd. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration & Conciliation, Act, 1996 and statutory modification thereof & rules made thereunder. It is further agreed that in spite of the



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fact that the Sole Arbitrator may be known to any of the Directors or share holders and that he may have been dealing with the Company or has occasion to deal with any matter of this agreement shall not disqualify him. Even if the Arbitrator may have expressed opinion in similar matter earlier shall also not render him disqualified, The arbitrator appointed shall not be incapacitated for reasons of their being the employee or an associate of FIITJEE Ltd or Group / Subsidiary Companies, and for reasons of having their being prior linkage with the company. The decision of the arbitrator shall be final & binding on both parties. The venue of Arbitration shall be Delhi/New Delhi only...”

26. After perusing Clause 17 as well as the impugned order, it is an admitted fact that there exists an arbitration clause in the agreement signed between the parties and any dispute arising amongst the parties pertaining to the interpretation of any clause or enrolment form or any claim etc. arising out of taking admission in the respondent Centre, the parties are at liberty to invoke the arbitration clause for proper adjudication of the said dispute.

27. With regard to the facts of the instant matter, this Court has referred to the judgment passed by the Hon’ble Supreme Court in ***Magma Leasing & Finance Ltd. v. Potluri Madhavalata, (2009) 10 SCC 103*** wherein, the Hon’ble Court strictly narrated its view with regard to the cases where reference to arbitration was not done despite there being an arbitration clause in the agreement executed between the parties. The relevant portion of the said judgment is reproduced herein below:

“..18. Section 8 is in the form of legislative command to the court and once the prerequisite conditions as aforesaid are satisfied, the court must refer the parties to arbitration. As a



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matter of fact, on fulfilment of the conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration. There is nothing on record that the prerequisite conditions of Section 8 are not fully satisfied in the present case. The trial court, in the circumstances, ought to have referred the parties to arbitration as per arbitration Clause 22...”

28. The Hon’ble Supreme Court in another judgment passed in ***Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503***, discussed the issue similar to the present petition. The relevant portion of the said judgment is as follows:

“..24. [Ed.: Para 24 corrected as per official corrigendum] This brings us to consider the last question involved in this appeal, namely, the maintainability of the revision petition before the High Court under Section 115 CPC. The High Court by the impugned order has come to the conclusion that its jurisdiction to entertain a revision petition would only be available if the order impugned is such that if it is allowed to stand, it would occasion failure of justice or cause an irreparable injury to a party against whom the said order is made. In support of this finding, the High Court has relied upon certain judgments of this Court. Having perused the said judgments, we are of the opinion that the findings given in those judgments do not apply to the facts of this case at all. We have come to the conclusion that the civil court had no jurisdiction to entertain a suit after an application under Section 8 of the Act is made for arbitration. Therefore, we are of the opinion that the trial court erred when it rejected the application of the appellant filed under Sections 8 and 5 of the Act. In such a situation, refusal to refer the dispute to arbitration would amount to failure of justice as also causing irreparable injury to the appellant. For the said reason, we are of the opinion that the High Court has



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erred in coming to the conclusion that the appellant was not entitled to the relief under Section 115 CPC...”

29. In the above said case, the Hon’ble Supreme Court held that civil courts do not have jurisdiction to entertain suits in the presence of an arbitration agreement between the parties. The said case arose from a dispute where the respondent namely Pinkcity Midway Petroleums, despite having an arbitration clause in its dealership agreement with Hindustan Petroleum Corporation Ltd. filed a civil suit seeking certain reliefs. During the course of proceedings, Hindustan Petroleum Corporation Ltd. contended that the dispute should be referred for arbitration, adhering to the arbitration clause and the Hon’ble Supreme Court emphasized the mandatory nature of Section 8 of the Act which requires judicial authorities to refer the parties for arbitration if the matter brought before them is subject to an arbitration agreement.

30. Consequently, the Hon’ble Supreme Court directed that the disputes be resolved through arbitration as per the agreement, underscoring that arbitration agreements must be respected and enforced according to their terms.

31. In the above backdrop, this Court is of the view that wherein an application under Section 8 of the Act has been filed and there exists an agreement that contains an arbitration clause, the said matter must be referred for arbitration, reason being that the parties have themselves consented to resolve any dispute by way of arbitration.

32. Bearing in mind the judicial dictum cited above and the facts and



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circumstances of the matter in hand, it is observed that the arguments of the learned counsel for the petitioner backed by the judgments relied upon by him can also be adjudicated by the Arbitrator. Since the agreement in the instant case contains an arbitration clause at Clause 27, in order to adjudicate upon the dispute raised by the petitioner, the instant matter shall be referred for arbitration as the Court in this scenario cannot adjudicate upon the validity of the terms of the agreement.

33. It is a settled position of law that this Court has limited powers under Section 115 of the CPC. The scope of Section 115 of the CPC includes jurisdiction alone, the irregular exercise or non-exercise or the illegal assumption of it is not a valid ground. The mere fact that the decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any material irregularity. It embarks a peculiar kind of limitation and the High Court will not interfere merely because the Court below has wrongly decided a particular suit being not maintainable, or because it proceeds with an erroneous construction of the various provisions of any particular Act.

34. Therefore, this Court does not find any force in the arguments advanced on behalf of the petitioner. This Court also does not find any applicability of the judgment relied upon by the learned counsel appearing on behalf of the petitioner.

35. In view of the foregoing discussions of facts as well as law, the impugned order dated 11th March, 2024 passed by the learned Civil Judge, West District, Tis Hazari Courts, Delhi in civil suit bearing CS SCJ no. 1648/19 is upheld.



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36. Accordingly, the instant revision petition is dismissed. Pending applications, if any, also stand dismissed.

37. Learned counsel appearing on behalf of the petitioner also submitted that since the petitioner was granted the liberty to approach the Court by the learned Trial Court, he may be granted the liberty to approach the Court. In view of the said submission and the fact that impugned order has been upheld by this Court, the directions given by the learned Trial Court also stands upheld and the petitioner is at liberty to avail the same.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 3, 2024
gs/ryp/da

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
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