2023:DHC:4157

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

% **Reserved on : 7th June, 2023**
Pronounced on: 12th June, 2023

\+ I.A. 9975/2023 in CS (COMM.) 331/2023

FIITJEE LIMITED ..... Petitioner

Through: Mr.Rajat Aneja, Mr.Ajay Saroya and Mr.Sudhir Katpalia, Advs.

versus

ALLEN EDUCATION AND MANAGEMENT SERVICES PVT. LTD & ORS. ..... Respondents

Through: Ms.Archana Pathak Dave and Mr.Kumar Prashant, Advs. for R1-5.
Ms.Ankita Chaudhary Rathi, Adv. for D6.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J.

I.A No. 9975/2023 *(Under Order XXXIX Rule 1 and 2 CPC)*

1. The captioned suit for declaration, permanent and mandatory injunction has been filed on behalf of the plaintiff is seeking *inter alia* a decree declaring that the defendant no. 6 has excelled in the Joint Entrance Examination (Main) 2023 (hereinafter "JEE Mains") due to the coaching imparted by the plaintiff from May 2019 to October 2022.

2. By way of the instant application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), the applicant/plaintiff is seeking the following interim reliefs:

"(a) Ex-parte ad-interim Injunction be passed in favour of the Plaintiff and against the Defendants No. 1 to 5, their servants, agents, nominees, officers, executors, legal representatives or anybody acting on their behalf, during the pendency of the present Suit, restraining them from publishing images / advertisement on Facebook or any other Social Media Platform or Print Media, directly or through the Defendant No. 6, claiming credit for the success of the Defendant No. 6, in JEE Exams;

(b) Ex-parte ad-interim Injunction be also passed in favour of the Plaintiffand against the Defendants No. 7 to 15, their servants, agents, officers, nominees, executors, legal representatives or anybody acting on their behalf, during the pendency of the present Suit, restraining them from publishing stories / newspaper items / reports etc. giving credit for the success of the Defendant No. 6 in JEE Exams to the Defendants No. 1 to 5, and to further restrain them from publishing stories / newspaper items / reports etc. that Defendant No. 6 was studying / doing Coaching in Kota, Rajasthan, since the year 2019;

(c) Any other Order(s) which this Hon'ble Court deem fit and proper in the facts and circumstances of the case may also be passed in the favour of the Plaintiff and against the Defendants."

3. For adjudication of the instant application, it may be necessary to recapitulate the factual background of the case, which is discussed hereafter.

4. The petitioner, FIITJEE Limited is a Company incorporated under the Companies Act, 1956 established in the year 1992 working in the education industry and having over 80 coaching centers across countries. The defendant no. 1 is also a Company registered under the Companies Act, 1956 running its coaching centers under the name and style of

'ALLEN Career Institute'. Defendant no. 6, Master Malay Kedia, is an IIT aspirant.

5. It is the case of the plaintiff that defendant no. 6 opted for the 'Four Year Classroom Program for IIT-JEE (Advanced)-Weekend Contact Classes' of the plaintiff and enrolled himself on 1st November 2018 for the Vasundhra (Ghaziabad) Centre. He attended classes of the plaintiff till September 2022 but stopped after 7th October 2022.

6. In January 2023, the results of JEE (Mains), 2023 were declared for Session I exam and the plaintiff was thereafter, aggrieved of the fact that the defendants no. 1 to 5 were claiming credit for the result of defendant no. 6.

7. On 17th November 2020, the plaintiff served a Notice upon defendants no. 1 to 5 regarding poaching of students from its institute and asking them to restrain themselves from indulging in unethical and illegal practices of claiming the name of the students of plaintiff's institute for their own advertisement and benefit.

8. Now, the plaintiff is before this Court seeking the prayers as stated above.

9. The learned counsel appearing on behalf of the applicant/plaintiff submitted that the defendants no. 1 has actually not imparted training / education or any significant training to defendant no. 6 and it is the plaintiff's training for a longer and significant period of time which led to the success of defendant no. 6 in the JEE Mains.

10. It is submitted that the plaintiff imminently apprehends mischief at the instance of the defendants no. 1 to 5 since it is clear that defendants no. 1 to 5, under a malicious plan and conspiracy, with a fraudulent intent have indulged in poaching the defendants no. 6 to showcase him as their Student to the public at large / in the market in order to derive false name/ market for itself. It is submitted that This act of the defendants no. 1 to 5 is causing wrongful loss to the Plaintiff and wrongful gain to the Defendants No. 1 to 5.

11. It is further submitted that in the event of the defendants no. 1 to 5 continue to advertise the success of the Defendant No. 6 in the manner shown in the Plaint the same shall cause irreparable loss and injury without any restitution therefrom. Therefore, it is prayed that the temporary injunction may be granted in favour of the plaintiff as prayed.

12. *Per Contra*, the learned counsel appearing on behalf of the defendants vehemently opposed the instant application and submitted that there is no cause of action arising against the defendants which invites interference from this Court.

13. It is submitted that the plaintiff cannot claim right over the achievements of defendant no. 6, including any right to advertise and publish defendant no. 6's achievements as their own. It is submitted that the Student has enrolled himself with the defendant institute and hence, no relief whatsoever can be claimed against the defendant no. 1.

14. It is further submitted that the documents produced by the plaintiff only shows that defendant no. 6 is wearing ALLEN branded T-Shirt in

various media interactions and there is no cause of action that has arisen which gives rise to the claims raised and relief sought in the instant application as well as the captioned suit.

15. Therefore, it is submitted that the instant application is liable to dismissed for being devoid of merit since the plaintiff has failed to show that any relief of injunction duly accrues in its favour.

16. Heard the learned counsel for the parties and perused the record.

17. The application which is before this Court is for the limited purposes of adjudication of temporary injunction by way of which the applicant/plaintiff is seeking two sets of reliefs. One from defendants no. 1 to 5, that is, seeking restrain from claiming the credit for success of defendant no. 6 in clearing JEE Mains and the other from defendant no. 7 to 15 from reporting that defendant no. 1 to 5 are responsible for the success of defendant no. 6.

18. The relevant provisions which have been invoked by the plaintiff read as under:

> *"**ORDER XXXIX***
>
> *TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS*
>
> *Temporary injunctions*
>
> ***1. Cases in which temporary injunction may be granted**.— Where in any suit it is proved by affidavit or otherwise—*
>
> > *(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

***2. Injunction to restrain repetition or continuance of breach**.—(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

[2A. Consequence of disobedience or breach of injunction.—(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not

> *exceeding three months, unless in the meantime the Court directs his release.*
>
> *(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]*

19. There is no doubt to the fact that the relief under the provision has been provided for and is often sought when the subject matter of a dispute is in the threat of being disrupted in some manner. The primary object is to protect the subject matter from being breached, destructed, wasted or alienated, in any form. While adjudicating upon a claim regarding temporary injunction under Order XXXIX of the CPC, the Court is to be satisfied of the three well settled tests of strong *prima facie* and balance of convenience in favour of the applicant and irreparable injury likely to be caused to him. The Hon'ble Supreme Court in ***Makers Development Services (P) Ltd. v. M. Visvesvaraya Industrial Research & Development Centre,*** **(2012) 1 SCC 735**, reiterated the test and tested the order passed by the Bombay High Court as under:

> *"11. It is settled law that while passing an interim order of injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, the court is required to consider three basic principles, namely, (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to the abovementioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties.*
>
> *12. It is also established law that the court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences*

depending upon the nature thereof and in dealing with such matters the court must make all endeavours to protect the interest of the parties.

17. Inasmuch as the main suit is pending, it would not be proper for this Court to delve into the matter and arrive at a categorical finding one way or other. Accordingly, we have to find out whether there is prima facie case and "balance of convenience" in terms of principles mentioned above.

19. The learned Single Judge as well as the Division Bench on appreciation of entire materials rendered the factual finding that the balance of convenience is not in favour of granting such mandatory interim order as claimed in Prayer Clauses (a) to (f). It is relevant to point out that though the appellant had stated that it had started construction in the year 1996, even after the information by the defendant to the appellant in 2002 that BEST had given their "no objection" for the demolition of temporary receiving station and the appellant can proceed with the demolition, however, the fact remains, the height of the construction was only 80 ft which shows that from the year 2001 to 2007, the appellant had not carried on construction and there was no obstruction from the side of the defendant. In view of all these factual aspects and in the light of the stand of the defendant disputing the existence of the agreement, as rightly observed by the learned Single Judge as well as the Division Bench, further permission for construction or ancillary works cannot be granted during the pendency of the suit."

20. It is evident that the interest of the parties must be protected while considering and adjudicating upon a dispute which is before the Court especially when the nature of the claims and subject matter sought to be protected is such that the grant or refusal of injunction may have serious consequences. In such circumstances, the court must make all endeavours to do the same.

21. The test as aforesaid is, however, rigorous and requires a stricter scrutiny on the claims as to protect the interest of the parties as well as the subject matter involved. While arguing a strong *prima facie*, the party seeking relief of temporary injunction is not only to show a *prima facie* case in its favour but shall satisfy the test of a 'strong' *prima facie* case. The keyword 'strong' cannot be ignored while testing the merit of the claim.

22. The Hon'ble Supreme Court in the landmark judgment passed in ***Dorab Cawasji Warden* v. *Coomi Sorab Warden*, (1990) 2 SCC 117,** while discussing the strict applicability of the test held as under:

> *"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:*
>
> > *(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.*
> >
> > *(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.*

> *(3) The balance of convenience is in favour of the one seeking such relief.*
>
> *17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."*

23. The said observations have been referred to and reiterated by the Hon'ble Supreme Court on several occasions including the recent judgment passed in ***K. Palaniswamy v. M. Shanmugam*, 2023 SCC OnLine SC 177.**

24. Applying the principles applicable to the test of strong *prima facie* case, the test of irreparable injury likely to be caused is also to be considered with greater rigour. The Hon'ble Supreme Court in ***Best Sellers (India) (P) Ltd.* v. *Aditya Birla Nuvo Ltd.*, (2012) 6 SCC 792**, to this effect, observed as under:

> *"29. Yet, the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.*
>
> *30. In Dalpat Kumar v. Prahlad Singh [(1992) 1 SCC 719] this Court held: (SCC p. 721, para 5)*
>
> > *"5. ... Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court*

> *further has to satisfy that non-interference by the Court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages."*

> *36. To quote the words of Alderson, B. in Attorney General v. Hallett [(1857) 16 M & W 569 : 153 ER 1316] : (ER p. 1321)*
>
> > *"... I take the meaning of irreparable injury to be that which, if not prevented by injunction, cannot be afterwards compensated by any decree which the court can pronounce in the result of the cause."*

25. Therefore, while convincing this Court that an injury that may be irreparable will be caused if the temporary injunction sought is not granted, the applicant shall consider that aforesaid principle.

26. Thirdly, the test of balance of convenience is also to be satisfied to the same extent as the tests of *prima facie* and irreparable injury. The Court is duty bound to consider the convenience of the applicant against the convenience of the non-applicant. The relief sought may be granted when the court is satisfied that greater inconvenience may be caused to the applicant if the injunction is not granted. Therefore, while keeping the well-established principles of the law pertaining to the grant of temporary injunction this Court shall apply the test to the instant matter.

27. The petitioner is essentially seeking the temporary injunction on the ground that there is an apprehension that the defendants no. 1 to 5 will claim the credit of success of defendant no. 6. To support its arguments, the plaintiff has produced several documents, print pieces, emails and other communications. However, the print news does not show in any manner that the defendant no. 1 Institute on its own accord has attempted to make commercial profits from the success of the defendant no. 6. As such, the news articles reproduced are the interviews given by defendant no. 6 Student discussing his success story and not attributing his success to either of the parties.

28. It is apparent that the entire case of the plaintiff in the instant application is based on apprehension that the defendant no. 1 to 5 will claim the credit of the training actually imparted by the plaintiff. Admittedly, defendant no. 6 is no longer enrolled with the plaintiff. In fact, he ceased to be their Student prior to even appearing for the JEE Mains on his own accord and, being a minor, with the consent of his parents. Therefore, any interview or statement that may be given by him *qua* his examinations or the results thereto will anyways not include the history of his studies and will not in any manner prejudice, injure or affect the plaintiff irreparably.

29. As discussed above, the plaintiff was to show that there is a strong *prima facie* case in its favour, however, this Court does not find any of the submissions made on behalf of the plaintiff strong enough to satisfy that an irreparable injury would be caused to the plaintiff in case the injunction is not granted. The institutions like the plaintiff intake

thousands of students every year who appear for competitive examinations and often the students may decide to drop or discontinue with the coaching. There is no reason strong enough in favour of the plaintiff which would invite the grant of an injunction by Court under Order XXXIX Rules 1 and 2 of the CPC, when the plaintiff has failed to satisfy the tests settled in law. Moreover, the learned counsel for the plaintiff has failed to show that the balance of convenience lies in the favour of the plaintiff and against the defendant.

30. The success of any student is the result of his hard labour and the infinite efforts he puts into the goal he has set to achieve. Therefore, dragging a child in a litigation driven by commercial interest between two competing coaching institutions claiming credit for the success of a child is an insult to his endless efforts and cannot be permitted.

31. In the instant case, there is nothing to show that a renowned institute like the plaintiff has to be apprehensive about which shall bring any kind of bad name to it. The institute is only apprehensive that certain time that the student has spent in with them will not be rewarded by way of commercial accreditation and validation, which in my considered view does not at all warrant a relief from temporary injunction as stipulated under Order XXXIX of the CPC.

32. Therefore, keeping in view the spirit and purpose of the provision, the fact and circumstances, the contentions raised and arguments made, this Court is of the view that at this stage no relief accrues to the plaintiff under Order XXXIX Rules 1 and 2 of the CPC as there is only an

apprehension that the defendants may claim credit without any substantial and strong case presented on behalf of the plaintiff.

33. Accordingly, the instant application stands dismissed for being devoid of merit.

34. It is made clear that the observations made herein are only for the purposes of adjudicating and deciding the instant application and are not a reflection of the opinion in the suit on merits. The same shall have no bearing on the final outcome of the suit.

35. The order be uploaded on the website forthwith.

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List on 27th July 2023.

CHANDRA DHARI SINGH
(VACATION JUDGE)

JUNE 12, 2023
gs/ms