



2026:AHC:99438

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2226 of 2025

M/S Hapur Roller Flour Mills And Another

.....Appellant(s)

Versus

M/S Shri Vardhman Roller Flour Mills And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Akanksha Gaur
Counsel for Respondent(s)	:	Anurag Sharma, Rahul Sahai

Court No. - 39

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the defendants/appellants and learned counsel for the plaintiffs/respondent nos. 1 and 2.

2. The present appeal has been filed against the impugned judgement and order dated 15.07.2025 passed by Additional District Judge, Ist, Hapur, in Civil Appeal No. 24 of 2025 (M/S Vardhman Rollers Flour Mills Vs. Rajendra Sharma and others).

3. Learned counsel for the appellants/defendants has submitted that, as per Clause 19 of the Tenancy Agreement dated 07.03.2024, it has been clearly stated and agreed between the appellants and the respondents that, in case of any change in the partnership, such change shall be incorporated only after obtaining prior approval of the appellants. She has further submitted that Clause 25 of the Tenancy Agreement dated 07.03.2024 clearly stipulates that, in the event of any dispute between the parties to the agreement, the matter shall be referred to an arbitrator, who shall be appointed with the consent of the parties, and the proceedings shall be governed in accordance with the Arbitration and Conciliation Act, 1996.

4. Learned counsel for the appellants has further submitted that, by way of a notarized partnership deed/agreement dated 21.10.2024, a new partner, namely Shri Ashish Jain, S/o Shri Ashok Kumar Jain, has been inducted by the respondents (first set), and Smt. Amita Jain, with whom the appellants had entered into the tenancy agreement dated 07.03.2024, has retired from the partnership firm of the respondents. The respondents failed to inform the

appellants about the aforesaid development, inasmuch as such addition is in clear violation of Clause 19 of the Tenancy Agreement dated 07.03.2024.

5. Therefore, in view of Clause 19 of the Tenancy Agreement, Respondent No. 2, who has been inducted as a partner and has been granted power of attorney pursuant to the deed dated 10.09.2024, does not have any locus to file the instant original suit, since Respondent Nos. 2 and 3 did not inform the appellants about the said change in the partnership or the appointment of Respondent No. 2 as the power of attorney holder. She has relied upon Section 8 of the Arbitration and Conciliation Act, 1996, which is quoted hereinbelow:

"8. Power to refer parties to arbitration where there is an arbitration agreement.-(1) *A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

6. Learned counsel for the appellants has further submitted that the first statement on the substance of dispute does not include; (i) applications relating interim application, (ii) jurisdictional objections or (iii) procedural matters as relied upon by her on law laid down by the Hon'ble Supreme Court in **Rashtriya Ispat Nigam Limited and another Vs. Verma Transport Co. (2006) Volume 7 SCC 275** wherein it is held that the first statement needs the written statement and not every application or reply filed prior thereto. She has further submitted that in view of **Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and others (2011) Volume 5 SCC 532**, the court clarified that if a defendant wants to seek reference to the arbitration under Section 8 of the Arbitration and Conciliation Act, the

application must be filed before or at the time of filing the written statement. She has further submitted that the partnership firm of the respondent is a unregistered firm and therefore in view of the Section 9 of the Indian Partnership Act, 1932; (1) no suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in the firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner in the firm. No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the register of firms as partners in the firm.

7. Learned counsel for the appellants has submitted that the judgment and order passed by the learned Additional District Judge in Civil Appeal No. 24 of 2025 (*M/s Sri Vardhman Roller Flour Mills and another v. Rajendra Sharma and others*), decided on 15.07.2025, is not in accordance with law and is liable to be set aside, and that the appeal deserves to be allowed.

8. The said civil appeal has arisen from the proceedings of Original Suit No. 174 of 2024 (*M/s Vardhman Roller Flour Mills and others v. Rajendra Sharma and others*). The learned appellate court has held that the appellant/defendant filed his first statement on the substance of the dispute in Application No. 15-C under Order XXXIX Rule 4 CPC, seeking modification of the ex parte injunction order. Hence, the application under Order XXXIX Rule 4 CPC, which was submitted on 07.10.2024 before the learned trial court, constituted his first statement on the substance of the dispute.

9. Thereafter, the application under Section 8 of the Arbitration and Conciliation Act, 1996 could not have been presented. The learned appellate court has further held that the appellant/defendant filed the application under Section 8 of the Act, 1996 on 23.10.2025. It has also been noted that the learned trial court, contrary to the settled principles of law, not only entertained the said application but also allowed it and dismissed the suit in violation of the provisions of law. Accordingly, the said order was set aside, and Original Suit No. 174 of 2024 was restored to its original number vide judgment and order dated 15.07.2025. Hence, the present appeal has been filed.

10. Original Suit No. 174 of 2024 was filed before the Civil Judge (Senior Division)-II, Hapur by M/s Vardhman Roller Flour Mills as plaintiff no. 1

and Ashok Kumar Jain as plaintiff no. 2 against defendant no. 1, Rajendra Sharma; defendant no. 2, Balvir Sharma; and defendant no. 3, M/s Hapur Roller Flour Mills, seeking the relief of permanent injunction to the effect that the plaintiffs shall not be evicted from the premises in question and that the defendants shall not interfere with their functioning except in accordance with due process of law.

11. The tenancy agreement relied upon by learned counsel for the appellants/defendants, dated 07.05.2024, was executed between Rajendra Sharma (defendant no. 1) and M/s Shree Vardhman Roller Flour Mills (plaintiff no. 1) through its partner, Amit Jain. The said tenancy agreement is for a period commencing from 01.03.2024 to 28.02.2033.

12. Learned counsel for the appellants has relied upon Clause 25 of the said tenancy agreement, which is a registered document, stipulating that in the event of any dispute arising between the parties, an arbitrator shall be appointed with the consent of both parties, and the award passed by the arbitrator shall be binding upon them. The entire process shall be conducted in accordance with the Arbitration and Conciliation Act, 1996.

13. Learned counsel for the appellants has also filed a supplementary affidavit stating that the respondents have vacated the disputed premises; however, they are not permitting the appellants to enter the premises under the garb of the interim order dated 17.09.2024 passed by the learned Civil Judge-II, Hapur, allegedly with a view to extract money from the appellants.

14. It is further submitted by learned counsel for the appellants that the respondents have failed to pay the electricity dues to the electricity department, due to which the electricity connection was disconnected. Upon becoming aware of these facts, the appellants deposited the entire outstanding dues on behalf of the respondents in order to prevent disconnection of the electricity supply.

15. Learned counsel for the respondents has filed objections and submitted that, on 07.03.2024, a registered tenancy agreement was executed between Rajendra Sharma, partner of M/s Hapur Roller Flour Mills (defendant-appellant/owner of the property), and M/s Shri Vardhman Roller Flour Mills through its partner, Smt. Amita Jain (tenant). The aforesaid tenancy agreement was registered, and the tenancy was valid for a period of nine years, w.e.f. 01.03.2024 to 28.02.2033, at a monthly rent of Rs. 1,00,000/- plus GST. A total sum of Rs. 19,00,000/- (Rs. 14,00,000/- and Rs. 5,00,000/- as security) was paid to the defendants/appellants, and the rent was to be

increased by 15% after three years. After execution of the agreement, the plaintiffs took possession of the flour mill and carried out maintenance and repairs of the plant and machinery. In order to maintain the quality and standard of their products, the plaintiffs spent Rs. 27,00,000/-, which was to be adjusted towards rent payable to the defendants/owners. The rent was accordingly paid till July, 2024.

16. It is further submitted that, on 14–15 August, 2024, defendant no. 1 restrained the plaintiffs and attempted to forcibly evict them and their workers in order to stop their manufacturing business. Again, on 20.08.2024, the defendant created pressure and attempted to evict the plaintiffs from the flour mill. On 25.08.2024, the defendants and their agents allegedly used criminal force to restrain the plaintiffs from continuing their manufacturing activities and attempted to evict them forcibly. These facts giving rise to the cause of action have been set out in paragraph 9 of the civil suit filed on 17.09.2024.

17. In the meantime, a letter dated 08.08.2024 was issued to the defendants/appellants by the State Bank of India, Hapur Main Branch, regarding renewal of the credit facility and setting out various compliances/directions for sanction of a credit facility to the tune of Rs. 10 crores for the purchase of plant and machinery. The bank directed defendant no. 2 (Rajendra Sharma) to cancel the registered lease agreement bearing Serial No. 3175 dated 07.03.2024, executed by M/s Hapur Roller Flour Mills in favour of Shri Vardhman Roller Flour Mill.

18. The State Bank of India further stated that the renewal of the credit facility had been due since 30.03.2024 and that nearly five months had elapsed; as per RBI guidelines, the account would be classified as a non-performing asset (NPA) on 26.09.2024. The property/flour mill in dispute had already been mortgaged/hypothecated to the bank against the credit facility availed, and the defendants were directed to furnish a non-encumbrance certificate by cancelling the lease deed.

19. Thus, the property forming the subject matter of the tenancy agreement dated 07.03.2024 had been mortgaged against the credit facility availed by the defendants, and the bank had directed them to cancel the said agreement. This fact has been stated in paragraph 12 of the civil suit.

20. The defendant/appellant has committed fraud by executing the tenancy agreement and concealing the material fact that the property was mortgaged against the credit facility availed by the defendant. The defendant/appellant

has also used criminal force to restrain and evict the plaintiff from his peaceful possession. Accordingly, the plaintiff has rightly filed the civil suit before the competent court.

21. He has further submitted that the well recognized examples of non-arbitral disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes. The present appeal lacks merit and is liable to be dismissed.

22. Learned counsel for the appellants/defendants has relied on paragraph 14 of **Krishan Radhu v. Emaar MGF Construction Pvt. Ltd., decided by the High Court of Delhi at New Delhi in CS (OS) No. 3281/2014, IA No. 7709/2015 (under Section 8 of the Arbitration and Conciliation Act), and OA No. 210/2015, dated 21.12.2016** that there is no dispute as to the meaning of the words "first statement on the substance of the dispute" used in Section 8 (1) of the Act, either before or after amendment. In the context of civil suit, such expression obviously would mean the "written statement" required to be filed in terms of the provision contained in Order 8 Rule 1 of the Code of Civil Procedure, 1908 (CPC). But, for the purposes of proceedings before other judicial authorities or forums where the Code of Civil Procedure may not strictly apply, it would mean and include the response (or reply) filed by the party against whom action is brought to explain his defences. In *Rashtriya Ispat Nigam (supra)*, the Supreme Court observed that this expression must be contra-distinguished with the expression 'written statement'. It implies submission of the party to the jurisdiction of the judicial authority and, therefore, what is needed is a finding on the part of judicial authority that the party has waived his right to invoke the arbitration clause. If an application is filed before filing the first statement on the substance of the dispute, the party cannot be said to have waived his right or acquiesced himself to the jurisdiction of the court.

23. Learned counsel for the plaintiffs/respondent nos. 1 and 2 has submitted

that the appellants/defendants put in appearance on 04.10.2024 and has relied upon the supplementary affidavit filed by the appellants/defendants. Thereafter, the appellants/defendants consistently participated in the proceedings of the original suit on 07.10.2024, 08.10.2024, 10.10.2024, 11.10.2024, 18.10.2024, 24.10.2024, 29.10.2024, 07.11.2024, 14.11.2024, 26.11.2024, and 28.11.2024. The appellants/defendants filed an application under Order XXXIX Rule 4 CPC for modification of the ex parte injunction and also filed an application under Section 8(1) of the Act on 23.01.2025.

24. Learned counsel for respondent nos. 1 and 2 has submitted that the appellants/defendants first put in appearance on 04.10.2024; therefore, the period of limitation for filing the written statement expired on 04.01.2025. However, the appellants/defendants did not file the written statement within the stipulated period and instead filed the application under Section 8(1) of the Act on 23.01.2025.

25. Learned counsel for respondent nos. 1 and 2 has relied upon the law laid down by the High Court of Delhi at New Delhi in ***SSIPL Lifestyle Private Limited v. Vama Apparels (India) Private Limited and another, 2020:DHC:1211***, wherein paragraph 22 it is held as follows:...

"22. Thus, as per the above decision, in view of the amended language in Section 8, the limitation for filing of the written statement under CPC for non-commercial suits and under the Commercial Courts Act for commercial suits would be applicable for filing of an application under Section 8. In view thereof, the Court concluded that the maximum period would be 90 days for ordinary civil suits and 120 days for commercial suits."

26. It is admitted that the appellants/defendants first put in appearance before the learned trial court in the original suit on 04.10.2024. Thereafter, the appellants/defendants filed an application under Order XXXIX Rule 4 CPC for modification of the interim injunction and also filed applications under other provisions of law, thereby consistently participating in the proceedings of the original civil suit. However, within the stipulated period of 90 days, the appellants/defendants did not file a written statement before the learned trial court.

27. The appellants/defendants have taken the plea that they had not yet filed their first statement on the substance of the dispute, and that the aforesaid applications cannot be considered as such, as only the written statement is to be treated as the first statement on the substance of the dispute. The

appellants/defendants have, however, consistently participated in the matter and filed various applications, including an application under Order XXXIX Rule 4 CPC. Despite the expiry of the stipulated period of 90 days for filing the written statement, the appellants/defendants did not file any application under Section 8 of the Arbitration and Conciliation Act, 1996.

28. The submission of the appellants/defendants that the period of 90 days is directory and not mandatory cannot be accepted in the present case. Such relaxation may be considered where the defendants have failed to submit the written statement within the stipulated period despite due diligence. However, in the present case, the appellants/defendants consistently participated in the proceedings and filed applications under various provisions of law, yet neither submitted a written statement within 90 days nor filed an application under Section 8 of the Act within the said period.

29. The appellants/defendants have also failed to satisfy the Court that they complied with the provisions of Section 8(2) of the Act. It is an admitted position that the application under Section 8(1) of the Act was filed on 23.01.2025, which is clearly beyond the stipulated period of 90 days. The appellants/defendants cannot be permitted to invoke the process of law at their convenience and without due diligence.

30. In view of the facts and circumstances of the case, and the nature of the dispute between the parties in Original Suit No. 963 of 2025, this Court is of the view that there is neither any illegality nor irregularity in the impugned order dated 15.07.2025 passed by the Additional District Judge-I, Hapur, in Civil Appeal No. 24 of 2025 (*M/s Vardhman Rollers Flour Mills v. Rajendra Sharma and others*), arising out of Original Suit No. 174 of 2024.

31. Accordingly, the appeal is liable to be dismissed and is hereby dismissed.

April 29, 2026

K.K. Maurya

(Abdul Shahid,J.)