

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CR No.7085 of 2015 (O&M)
Date of decision : 21.12.2015

Surinder Bansal

...Petitioner

Versus

Mohit Aggarwal and ors.

...Respondents

2. CR No.7030 of 2015
Date of decision : 21.12.2015

Promila Singla

...Petitioner

Versus

Mohit Aggarwal and ors.

...Respondents

3. CR No.7259 of 2015 (O&M)
Date of decision : 21.12.2015

Surinder Bansal

...Petitioner

Versus

Mohit Aggarwal and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Puneet Jindal, Sr. Advocate with
Ms. Sakshi, Advocate &
Mr. Paramveer Singh, Advocate for the petitioner.
(In CR No.7030 of 2015)

Mr. Sidhanth Kant, Advocate for the petitioner.
(In CR Nos.7259 & 7085 of 2015)

Mr. Nirbhay Garg, Advocate for respondent Nos.1 and 2
(in all petitions).

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three revision petitions bearing CR No.7085 of 2015 titled as Surinder Bansal Vs. Mohit Aggarwal and ors., CR No.7030 of 2015 titled as Promila Singla Vs. Mohit Aggarwal and ors. and CR No.7259 of 2015 titled as Surinder Bansal Vs. Mohit Aggarwal and ors. since common questions of facts and law are involved. The revision petitions bearing Nos.7030 and 7259 of 2015 have arising out of dismissal of the application filed by the petitioner-defendant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') and CR No.7085 of 2015 has been filed by the petitioner challenging the impugned order declining the application filed under Order 7 Rule 11 of CPC.

Mr. Puneet Jindal, learned Senior Counsel assisted by Ms. Sakshi, Advocate in CR No.7030 of 2015 and one Mr. Sidhant Kant, Advocate in CR Nos.7259 & 7085 of 2015, learned counsels appearing on behalf of petitioner submits that impugned order suffers from illegality and

perversity for the reasons that respondents-plaintiffs in the earlier round of litigation had relied upon partnership deed dated 20.01.2012 and in a suit filed by the petitioner Promila Singla, an order dated 07.04.2015 Annexure P-19 came to be passed vide which the suit titled as Promila Vs. Royal Mansions was stayed. Since two partnership deed of even date are in dispute and both contains arbitration clause. Keeping in view that prospective, application under Section 8 of the 1996 Act was filed which has erroneously been declined on the ground that since the partnership deed has been challenged being vitiated from fraud and forgery, therefore, it would not be within the realm/domain of the Arbitrator to adjudicate the lis. It has been further submitted that parties cannot be allowed to approbate and reprobate in the same breath inasmuch as that in November 2014, same very partnership was emphatically relied upon and thereafter voltefaced by coming out with plea that it suffers from forgery and fraud and thus prays that impugned order be set aside and the matter be referred to the Arbitrator. It has also been submitted that arbitration application filed under Section 11 of the Act filed at the instance of Surender Bansal-petitioner is pending adjudication before this Court.

Mr. Nirbhay Garg, learned counsel appearing on behalf of respondent-plaintiff submits, that factum of alleged forgery and fabrication of the partnership deed surfaced only after obtaining the information under the RTI Act which was supplied in the month of 23.07.2015. It is in these circumstances, the complaint dated 27.08.2015 was submitted to the police and the suit in the month of 03.09.2015 has been filed. He further submits that as per the information ascertained, the stamp paper was printed in the

month of February 2012 but issued in the month of January 2012 and on the same date, partnership deed has been drafted and, therefore, it is the Civil Court under Section 9 of the Code of Civil Procedure which would have power & jurisdiction to try, entertain and decide the dispute and not the Arbitrator.

He further submits that Whether stamp paper printed in the month of February, can be issued in the month of January or not being mixed question of fact and law, therefore, it is the trial Court which shall decide issue.

I have heard learned counsel for parties and appraised the paper book.

Shorn of the facts and as well as contention and rival contention of the parties noticed above, I am of the view that impugned order has been passed by the trial Court without noticing the subsequent events which have been submitted on behalf of Mr. Nirbhay Garg, Advocate for respondent-plaintiff vis-a-vis ascertaining of the information under the RTI Act and as well as filing of the complaint to the police, thus, of the view that matter vis-a-vis application filed under Section 8 and Order 7 Rule 11 CPC is required to be re-adjudicated.

The plea of Mr. Jindal, that all the documents were drafted in the month of January 2012 but since the parties desired to put a date of January 2012, therefore date is of 20.01.2012. All these factors in my view are not required to be considered in the present revision petitions but as already noticed above, is required to be readjudicated by the trial Court. The respondent-plaintiff shall be at liberty to bring on record subsequent

documents vis-a-vis information obtained under the RTI Act, the complaint made to the police etc. for the purpose of adjudication of the application under Section 8 of the Arbitration and Conciliation Act, 1996, afresh.

Keeping in view the aforementioned facts, impugned orders are set aside. The matter is remitted back to the trial Court to decide the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 and as well as under Order 7 Rule 11 of the Code of Civil Procedure, after taking into consideration all the documents which the parties to the lis may place it on record and decide afresh, preferably within a period of two months from the date of receipt of certified copy of the order.

Revision petitions are disposed of, accordingly.

21.12.2015

pawan

**(AMIT RAWAL)
JUDGE**