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

CR No.815 of 2014 (O&M)

Date of decision: July 07, 2015

Tarawati

.....Petitioner

Versus

Haryana State Electronics Development
Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Neeraj Sharma, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for respondent No.1.

SABINA, J

Petitioner has filed this petition challenging the order dated 19.11.2013, whereby, application moved by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 ('Act' for short), was dismissed.

Learned counsel for the petitioner has submitted that respondent No.1 has filed suit for recovery against M/s Care Computer Centre and others. Partners of the said computer centre were impleaded as defendants No.2 and 3. So far as defendant No.2-Atma Ram is concerned, he died on 26.03.2001, whereas, the suit was filed by respondent No.1 in the year 2007. Thereafter, respondent No.1 moved an application for impleading the son of deceased Atma Ram as defendant No.2 being his legal heir. Petitioner, who is the

widow of defendant No.2-Atma Ram was, however, not impleaded as his legal heir. On coming to know about the pendency of the proceedings, petitioner moved an application under Order 1 Rule 10 of Code of Civil Procedure, 1908 ('CPC' for short) for being impleaded as a party. The said application was allowed and the petitioner was impleaded as defendant No.4. Before filing the written statement, petitioner moved an application under Section 8 of the Act. The said application could not be said to have been made at a belated stage. Learned counsel has further submitted that as per Para 3 of the plaint, it was the case of the respondent No.1 that M/s Care Computer Centre was a partnership firm having defendants No.2 and 3 as its partners. It was further pleaded that franchise agreement was executed between the parties, which was signed by defendant No.1/firm. Learned counsel has further submitted that agreement had been signed by defendant No.3 on behalf of the firm. In these circumstances, it was not necessary that the agreement should have been signed by deceased Atma Ram also.

Learned counsel for the respondent No.1, on the other hand has opposed the petition and has submitted that the application under Section 8 of the Act had been made at a belated stage. Son of the petitioner was pursuing the case after he was impleaded as a party being legal heir of deceased Atma Ram. Son of the petitioner had filed his written

statement.

In the present case, application moved by the petitioner under Section 8 has been dismissed by the trial Court on the grounds that it had been filed at a belated stage and that the predecessor in interest of the petitioner had not availed the remedy at the appropriate stage and further that the agreement had not been signed by the predecessor in interest of the petitioner.

In the facts and circumstances of the present case, the trial Court fell in error while dismissing the application moved by the petitioner under Section 8 of the Act. Petitioner was not impleaded as legal heir of deceased Atma Ram by respondent No.1. Rather from the record, it is evident that at the time of filing of the suit, Atma Ram defendant No.2 was already dead. During the pendency of the suit, son of defendant No.2 was impleaded as a party, whereas, the petitioner was not arrayed as a legal heir of the deceased Atma Ram. Petitioner, on coming to know about the pendency of the suit, moved an application for being impleaded as a party. After the petitioner was impleaded as defendant No.1 and before filing the written statement, she immediately moved an application under Section 8 of the Act. As per the plaint, the agreement was executed between respondent No.1 and M/s Care Computer Centre. The agreement (AnnexureP-3) was thus, signed by defendant No.3

Renu Kaushal on behalf of the firm. Therefore, the fact that agreement (Annexure P-3), was not signed by Atma Ram is immaterial. In these circumstances, the reasons given by the trial Court while dismissing the application under Section Order 8 of the Act, are not sound reasons. Hence, it would be just and expedient to direct the trial Court to decide the application afresh in accordance with law.

Accordingly, this petition is allowed. Impugned order dated 19.11.2013 is set aside. Trial Court is directed to pass a fresh impugned order on the application under Section 8 of the Act in accordance of law.

**(SABINA)
JUDGE**

July 07, 2015

m.singh