

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

1. RSA No.1670 of 2015 (O&M)
Date of decision : 17.05.2016

M/s Vivek Service Station

...Appellant

Versus

Indian Oil Corporation Ltd.

...Respondent

2. FAO No.1776 of 2010 (O&M)
Date of decision : 17.05.2016

Indian Oil Corporation Ltd.

...Appellant

Versus

M/s Vivek Service Station and another

...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. Arun Nehra, Advocate for the appellant
(In RSA No.1670 of 2015)
for the respondent (In FAO No.1776 of 2010)

Mr. Ashish Kapoor, Advocate for the respondent
(In RSA No.1670 of 2015)
for the appellant (In FAO No.1776 of 2010)

AMIT RAWAL, J. (Oral)

CM No.4613-C of 2015

For the reasons stated in the application, which is duly supported by an affidavit, delay of 12 days in refiling the appeal is condoned.

Application stands allowed.

Main Case

This order of mine shall dispose of FAO No.1776 of 2010 titled as Indian Oil Corporation Ltd. Vs. M/s Vivek Service Station and another and RSA No.1670 of 2015 titled as M/s Vivek Service Station Vs. Indian Oil Corporation Ltd..

The brief preface of the matter is that appellant-plaintiff in regular second appeal was allotted dealership by the Indian Oil Corporation. Same was allegedly terminated on 13.03.2006 entailing into filing of the civil suit at Hansi. In pursuance to the application filed under Section 8 of 1996 Act, the trial Court vide order dated 21.04.2006 referred the parties to seek adjudication of the dispute through arbitration. The Arbitrator entered into the reference at Delhi and award dated 18.08.2008 came to be passed. However, the objections under Section 34 at the behest of the respondent in FAO No.1776 of 2010 were filed at Principal Court at Hisar. Same was allowed vide impugned order dated 19.02.2010.

Mr. Ashish Kapoor, learned counsel appearing on behalf of appellant in FAO submits that as per Clause 68 of the Dealership Agreement, the parties were alive that in case of any dispute the jurisdiction would be of Delhi Court, yet the jurisdiction of Hansi was invoked. He further submits that subsequent suit out of which RSA bearing No.1670 of 2015 has arisen, was filed for mandatory injunction against Indian Oil Corporation for supply of

petroleum products. However, Courts below dismissed the suit on merits and as well as for want of territorial jurisdiction.

Mr. Arun Nehra, learned counsel appearing on behalf of respondent in FAO and appellant in RSA submits that as per provision of Section 42 of the Arbitration and Conciliation Act in case an application under Section 8, which as noticed above, is filed, the Court at Hansi would have jurisdiction and accordingly objections were filed at District Hisar, as Hansi does not have Principal Court being Sub Division.

Mr. Ashish Kapoor, in support of the contention relied upon judgment rendered by the Hon'ble Supreme Court in *State of West Bengal Vs. Associated Contractors, AIR 2015 SC 260*, to contend that similar occasion had arisen in the aforementioned matter with regard to the applicability of Section 42 of the 1996 Act and it has been held that neither the provision of Sections 8 or 11 of 1996 Act would come within its preview. Once the parties had set their hands qua the jurisdiction at Delhi alone, Principal Court at Hisar and Civil Court at Hansi will not have jurisdiction. Faced with the situation, Mr. Arun Nehra, prays that he may be permitted to file the suit at Delhi and the finding rendered by the Court on merits may not be looked into, for, the adjudication as the trial Court ought not to have rendered the findings on merits once it found that Court at Hansi did not have any territorial jurisdiction. In other words, he submits that findings on merits should be treated as Obiter. He further submits that he may be granted permission to file objection under Section 34 of the Act in Competent Court at Delhi provided that other party cannot raise the objection with regard to the condonation of delay as it is settled law that provision of Section 14 of the Indian Limitation Act in such

cases can be invoked.

Mr. Ashish Kapoor, submits that his client would not take any objection with regard to the limitation provided the objection under Section 34 is filed within the time sought by this Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that since in view of provision of Clause 68 and Section 42 of 1996, vis-a-vis applicability of Section 8 and 11 of the 1996 Act, the Principal Court at Hisar and Civil Court at Hansi did not have territorial jurisdiction to try objections and entertain the suit. The findings given by the trial Court are hereby treated as obiter. The suit bearing No.203-C of 2010 is ordered to be returned by exercising the powers under Order 7 Rule 10 of the Code of Civil Procedure. The respondent in FAO is also given liberty to file objections within a period of one month from the date of receipt of certified copy of the order against the award. Suit, if any, is directed to be filed within a period of six weeks. In case any objections are filed, dealer is entitled to seek condonation of delay of the period whereby objections were pending at Hisar and as well as pendency of the appeal before this Court by taking the aid of Section 14 of the Act 1963.

In FAO, order under challenge is hereby set aside.

With the aforementioned observations, both the appeals are disposed of.

17.05.2016

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(AMIT RAWAL)
JUDGE