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

**Civil Revision No.5840 of 2017 (O&M)
Date of Decision: 11.02.2019**

**M/s Hotel Batra Place Pvt. Ltd. and others
.....Petitioners**

Vs

**M/s Devyani International Ltd. and anr.
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Vaibhav Sehgal, Advocate
Mr. Amandeep Singh, Advocate and
Ms. Vedika Gandhi, Advocate
for the petitioners.

Mr. Vivek Sethi, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the orders dated 14.08.2015 and 17.11.2016 passed by the Addl. District Judge, Ludhiana, vide which the application filed by the contesting respondent under Order 6 Rule 17 CPC for amendment in the petition under Section 34 of the Arbitration & Conciliation Act, 1996 was allowed and the application for review of the order dated 14.08.2015 was dismissed.

[2]. Perusal of the impugned order dated 14.08.2015 would

show that the Court has allowed the application by observing that the case is at initial stage. No prejudice is going to be caused to the respondents as they are not yet served. The application under Order 6 Rule 17 CPC was allowed.

[3]. The application filed by the petitioners for review of the aforesaid order was also dismissed by the Addl. District Judge, Ludhiana vide order dated 17.11.2016 by holding the following observations in para no.7 of the order:-

“7. As it is vehemently denied that they had not received the copy and the award had not been sent to the objectors by the arbitrator Sh. BR Bansal, Addl. District and Sessions Judge, (Retd.) who was sole arbitrator as respondent no.4 and further respondent no.2 and 3 were heirs of Ashok Kumar Batra and Mandeep Batra who were directors of the company and as such they were necessary parties and respondents cannot object to the same on merits as well as record was yet to be produced by Sh. BR Bansal, Addl. District and Sessions Judge (Retd.) who was sole arbitrator. Even the arguments that without notice no exparte order could be passed allowing the application under Order 6 Rule 17 CPC is also without merit as this court cannot give finding with regard to whether objectors had contested the petition and had received the copy of award sent by Sh. BR Bansal, Addl. District and Sessions Judge (Retd.) who was sole arbitrator without the perusal of the record which is in possession of arbitrator who has till date not supplied the record despite several notices issued to him. The finding with regard to receipt of award is disputed by both the sides. As such no finding can be given at this stage that the objection petition is time barred. Further no provision of law has been cited under which this court can review its own order during pendency of the objection petition. Hence the application in hand is dismissed.

Case is adjourned to 1.12.2016 for filing reply to amended petition.”

[4]. At the time of issuance of notice of motion on 01.09.2017, following order was passed by the Co-ordinate Bench of this Court:-

“Counsel for the petitioners inter alia contends that the trial Court without deciding the factual controversy as to when certified copy of the award was received by the respondent and the question of limitation for filing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 has dismissed the application for review of order dated 14.08.2015. It is further submitted that as at the time of deciding application for amendment of the objection petition, the Court has not decided the question of limitation, there is no question of review of the earlier order on the basis of application filed by the petitioners.

Notice of motion for 24.10.2017.

In the meantime, the Court below shall not insist for filing of reply to the amended objection petition.

Process dasti only.

The petitioner shall ensure service of the respondent by the next date of hearing.”

[5]. Thereafter, Mr. Vivek Sethi, Advocate appeared on behalf of respondent No.1 and service qua respondent No.2 being Arbitrator was dispensed with. The case was adjourned for arguments. Thereafter on 15.03.2018, the case was adjourned at the instance of respondent No.1. At one point of time, learned counsel for respondent No.1 sought time to ascertain whether there are chances of amicable resolution of the dispute or not? The case was further adjourned on that

premise. Thereafter, case was repeatedly adjourned at the instance of learned counsel for respondent No.1.

[6]. Vide order dated 08.02.2019, learned counsel for respondent No.1 still prayed for one week's time to complete his instructions and the case was adjourned for today with last opportunity to learned counsel for the respondents to address arguments. Today, learned counsel for respondent No.1 made statement to withdraw his power of attorney.

[7]. In case of pleading no instruction, notice to the parties can be issued, if the case is at initial stage. At the fag end of this revision petition, withdrawal of learned counsel for respondent No.1 cannot be treated to be an ordinary circumstance particularly on number of occasions the case was adjourned at his request.

[8]. Perusal of the record would show that the award was passed on 31.12.2014. Copy of the same was sent by the Arbitrator to respondent No.1 through registered post on 01.01.2015. The objections were filed by the judgment-debtors under Sections 34 of the Arbitration and Conciliation, Act, 1996 on 01.05.2015 and the same was within limitation. Thereafter an application was filed on 13.08.2015 for amendment of the objections and that was beyond period of limitation. The application has been allowed without even issuing notice to the

petitioners.

[9]. In view of law laid down in **Flight Centre Travels P. Ltd. vs. Rahul Nath and others, 2012(57) R.C.R. (Civil) 671** and **Sri Ramnik Vallabhdas Madhvani and others vs. Taraben Pravinlal Madhvani, 2004(1) R.C.R. (Civil) 194**, the application cannot be allowed without issuing notice to the decree-holder. No amendment can be allowed without affording an opportunity to the other party to rebut the same.

[10]. In the instant case, filing of application for amendment in the petition under Section 34 of the Arbitration & Conciliation Act, 1996 was a debatable point as to the applicability of limitation beyond 120 days for which, notice was required to be given to the decree-holders/petitioners.

[11]. At this stage, withdrawal of power of attorney by learned counsel for respondent No.1 would not prevent the Court from passing the order i.e. to direct the Addl. District Judge, Ludhiana to revisit the issue again and decide the application for amendment after issuing notice to the petitioners in accordance with law. Consequently, the impugned orders dated 14.08.2015 and 17.11.2016 passed by the Addl. District Judge, Ludhiana are set aside.

[12]. The Addl. District Judge, Ludhiana would be obligated to pass appropriate order after issuing notice to the parties and

decide the same afresh in accordance with law without being influenced by any statement of fact recorded hereinabove. Both the parties are directed to appear before the Addl. District Judge, Ludhiana on the date fixed.

[13]. In view of aforesaid observations, this revision petition is disposed of.

February 11, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No