

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

Civil Revision No. 2536 of 2020

Date of Decision: January 11, 2021.

M/s Alpha Corp. Development Private Limited PETITIONER (s)

Versus

Rohini Shiksha and Sanskritik Sansthan and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Alok Jain, Advocate
for the petitioner.

Mr. Vikas Bahl, Senior Advocate with
Ms. Eliza Gupta, Advocate and
Ms. Surabhi Kaushik, Advocate
for respondent No.1.

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

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Challenge in this revision petition is to order dated 28.10.2020 (Annexure P1) passed by the learned Additional District Judge, Karnal whereby petition under Section 29-A of the Arbitration and Conciliation Act, 1996 (for short, the 'Act') filed by respondent No.1 on 23.10.2020 is treated to have been

instituted on 07.10.2020 pursuant to order dated 06.10.2020 (Annexure P5) passed by the learned District Judge, Karnal.

Brief facts necessary for adjudication of the matter are that, dispute between the petitioner and respondent No.1 was referred to arbitration without intervention of court. An application under Section 29-A of the Act for extension of time was moved by respondent No.1 after receipt of communication dated 01.01.2020 from the Arbitrator to the effect that Arbitral Tribunal had become *functus officio* after expiry of six months. The said application was filed before the learned District Judge, Karnal. Present petitioner filed an application under Section 19 of the Act and Order 7 Rule 11(d) read with Section 151 CPC for dismissal of the petition, *inter alia*, claiming that the said petition could be instituted before the Commercial Court only. Learned counsel for respondent No.1 suffered a statement on 06.10.2020 to the effect that without conceding on merits of the application for rejection of plaint, he would have no objection in case the application under Section 29-A of the Act for extension of time is returned to be presented before Commercial court of appropriate jurisdiction at Karnal. In view of the said statement, learned District Judge, Karnal vide order dated 06.10.2020 (Annexure P5) ordered return of the petition to be presented before the competent Commercial Court at Karnal and parties were directed to appear before the said court on 07.10.2020. Counsel for respondent No.1, on appearance before the said court on 07.10.2020, sought permission to file a formal petition in view of the provisions of the Commercial Courts Act, 2015 which was granted. Petition in conformity with said provision was accordingly filed on 23.10.2020. Copy of order dated 07.10.2020 is Annexure P7 with this

petition.

Present petitioner raised an objection that as per mandate of Order 7 Rule 10 CPC, after return of petition, the same was required to be treated as a fresh petition when presented before the court and should be re-numbered and proceedings should be carried forward from that stage. This objection on behalf of the petitioner was rejected by the learned Additional District Judge, Karnal vide impugned order dated 28.10.2020 (Annexure P1) when the matter was fixed after checking of the petition under Section 29A(4) and (5) of the Act. Aggrieved therefrom, present revision petition has been filed.

Notice of motion was issued by a coordinate Bench in this case while referring to judgment of the Hon'ble Supreme Court in **Oil and Natural Gas Corporation Ltd. v. Modern Construction & Company, 2014(1) SCC 648** as relied upon by learned counsel for the petitioner.

Mr. Bahl, learned counsel for respondent No.1, the contesting respondent, submits that present petition is, in fact, not maintainable in view of Sections 4 and 5 of the Act and Section 8 of the Commercial Courts Act, though he is unable to deny that date of institution of a suit is to be treated as the date of presentation before the court of competent jurisdiction after its return. It has been held by the Hon'ble Supreme Court in ONGC's case (supra) that after return of plaint, presentation thereof before the court of competent jurisdiction amounts to institution of a fresh suit, requiring commencement of trial afresh. Latter cannot be a continuance of the earlier suit.

Doubtlessly, Section 8 of the Commercial Courts Act, 2016 bars institution of revision petition against interlocutory order and appeal is provided

in such a situation, however, keeping in view the peculiar facts and circumstances, relegating the petitioner to remedy for filing an appeal, at this stage, would only lead to further delay in the matter. This is so especially keeping in view that controversy sought to be raised in this petition is settled in light of the abovesaid categorical judgment of the Hon'ble Supreme Court, which learned counsel for respondent No.1 is unable to deny. Therefore, matter is being decided without going into the controversy regarding maintainability of the petition.

As noted in the foregoing paras, date of institution of the petition would be the date on which it is presented before the court of competent jurisdiction after its return. The Hon'ble Supreme Court in ONGC case (supra) has observed as under:-

“17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.”

Learned counsel for respondent No.1 has not been able to deny the

settled position in this regard. Accordingly, order dated 28.10.2020 (Annexure P1) passed by the learned Additional District Judge, Karnal is set aside to the extent it is held that petition under Section 29-A of the Arbitration and Conciliation Act, 1996 instituted before the said court, cannot be termed as a fresh petition and proceedings are required to be taken further from the stage before the learned District Judge. Date of institution of the petition would be treated to be 23.10.2020 and further proceedings to be taken in the said petition, in accordance with law therefrom. Keeping in view the facts and circumstances, it is expected that an effort shall be made for expeditious disposal of the matter.

Petition is disposed of accordingly.

January 11 , 2021.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No