

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

CR No. 2540 of 2020(O&M)

Date of Decision: January 11, 2021.

M/s Alpha Corp Development Private Limited PETITIONER

Versus

Rohini Shiksha and Sanskritik Sansthan and others RESPONDENTS

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.

Petitioner is aggrieved of order dated 16.11.2020 (Annexure P1) passed by the learned Additional District Judge, Karnal and subsequent order dated 17.11.2020 (Annexure P2) passed by the learned Sessions Judge, Karnal.

Vide order dated 16.11.2020, learned Additional District Judge, Karnal on a report of its Ahlmed, suo-moto referred arbitration petition No.3 of 2018 filed by respondent No.1 before the learned District Judge, Karnal with the observation that connected arbitration case i.e., Arb. CIS No.1 of 2020 stands transferred to the court of Mr. R.K.Mehta, Additional District Judge, Karnal vide

order dated 06.10.2020 passed by the learned District Judge, Karnal, therefore, it would be appropriate that the present matter be also dealt with by the same court. Thereafter, learned Sessions Judge, Karnal vide order dated 17.11.2020 withdrew the matter and directed the same to be listed before the court of Mr. R.K.Mehta, Additional District Judge, Karnal and parties were directed to appear before the said court on 18.11.2020.

Present petition has been filed by the petitioner on the ground that such a suo-moto reference and subsequent transfer without any notice or adjudication of petitioner's application under Order 7 Rule 10 read with Section 151 CPC and that too in the absence of any of the parties/their lawyers, is illegal, arbitrary, perverse and beyond jurisdiction.

Learned counsel for the petitioner submits that connected arbitration petition i.e., CIS No.1 of 2020 was not transferred as such by the learned District and Sessions Judge, Karnal but said petition had been returned to respondent No.1 to be presented before the Commercial Court and it is in view of the specific statement made by the counsel for the said respondent that the matter was assigned to the court of Mr. R.K.Mehta, Additional District Judge, Karnal and parties were directed to appear on 07.10.2020 before the said court. It is further submitted that said respondent was permitted to file a formal petition in view of the provisions of the Commercial Courts Act, 2015 and the said matter was then adjourned on 23.10.2020 for filing the petition as per the provisions of Commercial Courts Act. Learned counsel for the petitioner has referred to order dated 06.10.2020 passed by the learned District Judge, Karnal (Annexure P10) and order dated 07.10.2020 (Annexure P12) passed by the learned Additional District Judge, Karnal. Present petitioner had filed an application for rejection of

said petition under Order 7 Rule 11(d) read with Section 151 CPC, claiming that the same is liable to be dismissed as it was maintainable only before the Commercial Court. It is a consequence thereof that statement was suffered on behalf of respondent No.1 and the petition returned.

Present arbitration petition, it is submitted, stood adjourned to 06.03.2021, therefore, present petitioner moved an application (Annexure P13) under Section 151 CPC for preponement of the same and notice was issued thereon on 03.11.2020 (Annexure P14) for 24.11.2020. Matter was, however, *suo moto* transferred to the court of Mr. R.K.Mehta, Additional District Judge, Karnal vide impugned orders, evidently passed prior to 24.11.2020.

Apprehension set-forth by learned counsel for the petitioner is that a petition has to be filed by respondent No.1 before the Commercial Court in proper form and manner. A petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the 'Act') as such cannot be treated to be maintainable in the said form. Petitioner's application under Order 7 Rule 10 CPC has not been decided, therefore, transfer of the petition before the Commercial Court in this manner, without affording an opportunity of hearing to the parties, has caused grave prejudice to the petitioner. Another apprehension as raised by the petitioner's counsel is that its application under Order 7 Rule 10 CPC has not been transferred alongwith the petition. It is submitted that petition under Section 9 of the Act cannot automatically be treated to be a petition under the Commercial Courts Act. Therefore, suo-moto reference by learned Additional District Judge, Karnal merely on the report of the Ahlmed is uncalled for and the same cannot and should not be equated with a situation where a petition has been returned in terms of Order 7, Rule 10 CPC. It is, thus, prayed that transfer of the

arbitration petition, CIS No.1 of 2020 be set aside and the petitioner's application under Order 7, Rule 10 CPC be first decided.

Mr. Vikas Bahl, Senior Advocate, learned counsel for respondent No.1 refers to Section 24 CPC and submits that the matter can definitely be transferred to the court of learned Additional District Judge, Karnal on the basis of order dated 17.11.2020 passed by the learned District Judge, Karnal, who was well within his jurisdiction to have passed such order. However, facts as stated by learned counsel for the petitioner in respect to proceedings in the matter of petition bearing CIS No.1 of 2020 titled as Rohini Shiksha and Sanskritik Sansthan v. M/s Alpha Corp. Development Private Limited, are not denied. It is accepted that said petition was, in fact, returned on the statement of counsel for respondent No.1 and thereafter a petition in conformity with the provisions of the Commercial Courts Act has subsequently been filed on 23.10.2020. Learned senior counsel does not deny that in the present matter, application under Order 7 Rule 10 CPC filed by the petitioner is yet to be decided and no steps, at this stage, have been taken by respondent No.1, as taken in CIS No.1 of 2020. No objection is raised on behalf of respondent No.1 in case said application is decided by the court to which the matter has now been referred to, especially keeping in view the fact that the said court apart from exercising powers of a designated court, also exercises powers of a civil court. It is submitted that no undue benefit, whatsoever, in any case, accrues to respondent No.1 by the said reference and the matter would be a continuance of the earlier proceedings, as the petition in this case has not been returned. The petitioner, it is submitted, merely seeks to delay the proceedings. It is thus prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through

the file.

Factual matrix of the matter regarding the two arbitration petitions preferred by respondent No.1 as narrated above, are not in dispute. Keeping in view the peculiar facts and circumstances of the case, I do not find that ends of justice would be met by setting aside the impugned orders and directing the court earlier seized of the matter, to first afford an opportunity of hearing to the parties. It is to be noted that both the petitioner and respondent No.1 are *ad idem* that application under Order 7 Rule 10 CPC filed by the petitioner is still pending and there is no impediment to decision of the same by the court to which the matter has been referred. Apprehension raised by learned counsel for the petitioner that its application would not be decided, is unfounded. It is relevant to note, at this stage, that Civil Revision No.2536 of 2020 filed by the present petitioner has also been decided today itself. Said petition has been filed in regard to the connected petition bearing No.CIS No.1 of 2020. After return of the said petition, parties appeared before the court of Mr. R.K.Mehta, Additional District Judge, Karnal on 07.10.2020 in compliance with order dated 06.10.2020 passed by the learned District Judge, Karnal. Petitioner thereafter had filed a petition in conformity with the provisions of Commercial Courts Act on 23.10.2020, which was treated to have been instituted on 07.10.2020 by the learned Additional District Judge, Karnal. Civil Revision No.2536 of 2020 was filed by the petitioner impugning the said order and same has been decided while holding that the petition has to be treated to be instituted on 23.10.2020, especially in view of the judgment of the Hon'ble Supreme Court in **Oil and Natural Gas Corporation Ltd. v. Modern Construction & Company, 2014(1) SCC 648.**

In view of this matter and in order to obviate any further delay in the proceedings, present revision petition is disposed of with a direction to the court before which the matter is now listed, to decide all the pending applications filed in CIS No.3 of 2018, which has been placed before it and thereafter proceed further, in accordance with law.

Keeping in view the fact that present is a matter relating to arbitration, effort be made for expeditious disposal of the same.

January 11 , 2021.
'om'

(LISA GILL)
JUDGE

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