

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

FAO-COM-25-2022 (O&M)

Date of Decision: 27.10.2022

Ujjagar Constructions Pvt. Ltd.

. . . . Appellant

Vs.

Nyati Healthcare and Research NCR Pvt. and others

. . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO

HON'BLE MR. JUSTICE H.S. MADAN

Present: - Mr.Puneet Bali, Sr. Advocate, and
Mr.Aashish Chopra, Sr. Advocate with
Mr.Gagandeep Singh, Advocate,
Mr.Tushar Sharma, Advocate,
Mr.Paramanand Yadav, Advocate and
Mr.Vishavjeet Beniwal, Advocate, for the appellant.

M.S. RAMACHANDRA RAO, J. (ORAL)

Notice of motion.

Mr.Rahul Makkar and Mr.Amandeep Singh assisting counsels of
Mr.Akshay Bhan, Sr. Advocate accepts notice on behalf of respondents
No.1&2 and Mr.Karan Kaushal, Advocate, accepts notice on behalf of
respondent No.3.

This appeal is filed challenging order dt.11.10.2022 passed by
the Additional District Judge-cum-Presiding Judge, Exclusive Commercial
Court at Gurugram exercising jurisdiction under the Commercial Courts Act,
2015, returning the plaint presented by the appellant after giving a finding
that the suit does not involve a “commercial dispute” on the touchstone of
Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, and directing the
appellant to present the plaint before the Court of learned Civil Judge (SD),
Gurugram after making compliance of Order 7 Rule 10(2) CPC.

The Commercial Court further directed the parties and their counsel to appear

before the learned Civil Judge (SD), Gurugram on 28.10.2022. The learned Commercial Court Judge placed reliance on the judgment of the Supreme Court in *Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and another*¹.

Having passed the said order, the Commercial Court thought it unnecessary to frame a preliminary issue on the applicability of the statute as sought by the appellant.

Since we do not find any error in the order passed by the Commercial Court, we do not propose to interfere with the said order. However, the application presented along with the plaint by the appellant under Order 39 Rule 1&2 CPC is directed to be decided by the learned Civil Judge (SD), Gurugram within one week of presentation of the plaint afresh pursuant to the impugned order passed by the Commercial Court, after hearing all the parties and their respective counsels. Counsel for all the parties assure this Court that they will be present before the Court of learned Civil Judge (SD), Gurugram on 28.10.2022 at 10:00 AM without fail.

A copy of this order be supplied to counsel for the parties under the Signature of Bench Secretary of this Court.

(M.S. RAMACHANDRA RAO)
JUDGE

(H.S. MADAN)
JUDGE

27.10.2022

Vivek

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**