

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-1910-2023 (O&M)

Date of decision: 13.09.2023

Reserved on: 02.09.2023

M/s BVM Exports and Traders Pvt. Ltd.

..Petitioner

Versus

M/s Bansal Wines and others

.Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Akshay Bhan, Senior Advocate with  
Mr. Santosh Sharma, Advocate  
Mr. Sushant Kareer, Advocate for the petitioner

Mr. Rajesh Lamba, Advocate for the respondent no. 1 and 2

Mr. Amit Jain, Senior Advocate with  
Mr. Aryaman Thakur and  
Mr. Anupam Mathur, Advocates for respondent no.3

**ANIL KSHETARPAL, J**

1. This is plaintiff's revision petition filed against orders dated 6<sup>th</sup> February, 2023 (Annexure P-17), 14th February, 2023 (Annexure P-18), and 20th February, 2023 (Annexure P-19). Vide order dated 6th February, 2023, the court issued notice for 14th February, 2023 to defendant No. 3 whereas in the order dated 14th February, 2023 the defendant No. 3 entered appearance and the court granted one week's time to file reply while adjourning the case to 20<sup>th</sup> February, 2023. On 20<sup>th</sup> February, 2023 the written statement was filed by defendant No. 3, however, the learned counsel representing the plaintiff (petitioner) objected to the same on the ground that it has been filed after a period of more than 120 days. The court overlooked the objection of the plaintiff

and permitted defendant No. 3 to file his reply even after a period of 120 days.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

3. The learned senior counsel representing the petitioner while referring to Section 15 read with Section 16 of the Commercial Courts Act, 2015 contends that while allowing the plaintiff's application to transfer the case to the Commercial Court, the parties were directed to appear before the trial court on 24th May, 2022 and therefore, the period of 30 days is required to be counted from that date. He submits that the aforesaid period could be at the most extended upto further period of 90 days as per second proviso to Order VIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). He relies upon the judgment passed by the Supreme Court in **SCG Contracts India Private Limited vs KS CHamankar Infrastructure Limited (2019) 12 SCC 210**

4. On the other hand, the learned senior counsel representing the respondents while relying upon case titled as '**Raj Process Equipments and Systems Private Limited versus Honest Derivation Private Limited 2022 (4) CCC 771**' submits that the judgment passed in **SCG Contract's case (supra)** has already been explained and therefore, now at this stage, the court should not direct striking out of the written statement, particularly when the Commercial Court issued notice to defendant No. 3 only on 6th February, 2023.

5. This Court has considered the submissions of the made by the learned counsel representing the parties and perused the paper book.

6. It is evident that the learned District Judge while transferring the civil suit from the court of Civil Judge, Junior Division to the court of the Additional District Judge, Faridabad directed the parties to appear before the transferee court on the date already fixed. This order was passed in the presence of the learned counsel representing the defendant No. 3. In these circumstances, it was the responsibility of defendant No. 3 to enter appearance before the Commercial Court, Faridabad. However, on reading, it is evident that the court did not notice this fact and adjourned the case for awaiting the report of the Mediation Centre. In fact, the court was even aware that Sh. Jitender Singh, Advocate, was only appearing on behalf of defendant No. 1 and 2 and not on behalf of defendant No. 3. Thereafter, on 4<sup>th</sup> August, 2022, the court once again did not notice the distinction and adjourned the case for filing written statement on behalf of the defendants. In the meantime, reply to the application filed under Order VII Rule 11 CPC was filed by the plaintiff and defendant No. 1 and 2 also filed their written statement. On 6<sup>th</sup> February, 2023, the court first time noticed that defendant No. 3 has not entered appearance. At that stage, the court opted to issue a notice to defendant No. 3. Thus, it is evident that during all this while the court was not aware of the fact that defendant No. 3 has not entered appearance pursuant to the direction of the District Judge and no order proceeding ex-parte against defendant No. 3 was passed.

7. The written statement filed by defendant No. 1 and 2 is already on record whereas a separate written statement filed by defendant No. 3 has also been permitted to be taken on record by the court on 20<sup>th</sup> February, 2023. As per the copy of the plaint, the civil suit was filed before the Civil Court on 12th March, 2020. Moreover, three years have already elapsed.

8. In these circumstances, this Court does not find it appropriate to interfere at this stage while deferring the decision on legal arguments to some other appropriate case. However, since more than three years have already elapsed, the Commercial Court is requested to make sincere endeavours for the final disposal of the suit within a period of one year.

9. With these observations, the revision petition stands disposed of.

10. All the pending miscellaneous applications, if any, are also disposed of.

13.09.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)**  
**JUDGE**