

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

FAO-COM-12-2023 (O&M)

Date of decision : 23.08.2023

Haryana Shehri Vikas Pradhikaran

..... Appellant

Versus

M/s Lekh Buildtech Pvt. Ltd.

....Respondent

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Deepak Sabherwal, Advocate,
for the appellant.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

1. This appeal has been filed by the appellant being aggrieved by the order dated 23.11.2022 passed by the Commercial Court, Gurugram, granting interim relief in favour of the respondent.

2. The appellant has also filed CM-31-FACOM-2023 praying for condonation of delay of 170 days in filing the appeal.

3. Learned counsel for the appellant submits that before the Commercial Court, on 23.02.2023, the appellant raised preliminary objection regarding maintainability of the proceedings under the Commercial Courts Act, 2015 (for short, 'the Act'), in view of the decision of the Supreme Court rendered in *Ambalal Sarabhai Enterprises Ltd. Vs. K.S. Infraspace LLP & Anr., 2020 (15) SCC 585*,

but till date, the objection has not been decided.

4. It is stated that evidently and apparently, the proceedings under the Act are not maintainable and could not be taken up by the Commercial Court, but the preliminary objection raised by the appellant in that regard is not being considered and the impugned interim order is continuing. It is submitted that on account of this, the State is suffering loss of Rs. 500 crores per year, in spite of the fact that the proceedings initiated by the respondent are not maintainable.

5. Learned counsel for the appellant informs that the respondent is seeking adjournments and the matter is still pending, in spite of an order dated 29.07.2023 passed by the Commercial Court to the effect that in case, the respondent herein seeks further adjournment, the interim order would be vacated.

6. Having heard learned counsel for the appellant, it is observed that the impugned order granting stay was passed on 23.11.2022, whereas the objection regarding maintainability of the proceedings under the Act has been raised by the appellant on 23.02.2023 and the same is pending consideration before the Court below.

7. As the issue raised by the appellant in the present appeal as well as in the preliminary objection regarding maintainability of the proceedings under the Act before the Commercial Court is the same and as the propriety demands that the issue should first be considered by the Principal Court, without entering into the merits of the case, present appeal is disposed of, observing that the Court below shall decide the main petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, by passing a detailed order, as expeditiously as possible, after taking into consideration the objection raised by the appellant regarding

maintainability of the proceedings, and the arguments raised by both the parties.

8. CM-31-FACOM-2023 also stands disposed of.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(VIKAS BAHL)
JUDGE

August 23, 2023
ndj

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