



"De Novo Trial Under Order VII Rule 10 & 10A Must be Conducted by a New Court": Supreme Court

The Hon'ble Supreme Court bench comprising of Justice R.F. Nariman, Justice Navin Sinha and Justice Indira Banerjee while hearing a civil appeal in the matter of *M/s. EXL Careers And Another Vs. Frankfinn Aviation Services Private Limited*<sup>[1]</sup> held that if a plaint is returned under Order VII Rule 10 and 10A of the Civil Procedure Code 1908, for presentation within the court during which it should be instituted, the suit is to be considered as de novo<sup>[2]</sup>.

The bench also made a reference to a two judges bench opining a supposed discrepancy between two Division Bench decisions in *Joginder Tuli Vs. S.L. Bhatia*<sup>[3]</sup>

#### Facts

The Respondent i.e. *Frankfinn Aviation Services Private Limited* filed a recovery suit before the Gurgaon Court against the Appellant i.e. *M/s. EXL Careers And Another* which was arising out of a franchise agreement signed between the parties. Further, the Appellant challenged the territorial jurisdiction of Gurgaon Court and filed an application under Order VII Rule 10 CPC and stated that the appellant had neither the business nor the residence in the said jurisdiction and also prayed the plaint to be returned to the respondent. The said agreement had clause 16B related to jurisdiction to settle all disputes but the Appellant had not raised any objection under said clause 16B of the agreement.

The said application that challenges the territorial jurisdiction was rejected by the Gurgaon Court opining that it couldn't be decided summarily and was required to be framed as a preliminary issue. In the said case the appellant had filed its written statement and the respondent its replication. Further, the issues in the suit were framed by the Gurgaon Court inadvertently ignoring the earlier order for framing of the preliminary issue about jurisdiction. Even the appellant had not explained why it had not raised an objection under clause 16B of the agreement in its application filed under Order VII Rule 10 CPC.

After hearing the argument, the Gurgaon Court rejected the argument under clause 16B of the Agreement regarding the exclusive jurisdiction in Delhi. The said order was challenged before High Court and the High Court in its

revision order set aside the order of Gurgaon Court and stated in the light of clause 16B of the franchise agreement, the Hon'ble Court found that the Gurgaon court lacked territorial jurisdiction and directed to return of the file. The High Court vide its impugned order dated 13.03.2018 held that the suit at Delhi shall proceed from the stage at which it had been pending at Gurgaon Court and not de novo.

#### Issues

When, under Order VII Rule 10 and 10A of the CPC, a plaint is returned for submission to the court at which it should be instituted, should the case proceed de novo or should it continue from the stage where it was pending before the court when it was returned?

#### Submission

The applicant counsel stated that the judgments in *Joginder Tuli (Supra)* and *Modern construction (Supra)* are not disputed. Further, the counsel for the applicant submitted that under Order VII Rule 10A, fresh summons had to be issued upon presentation of the plaint before the court of competent jurisdiction. So, the suit will proceed *de novo* at Delhi and cannot be continued from the earlier stage at Gurgaon. In support of his submission, he relied upon *Ramdutt Ramkissen Dass vs. E.D. Sassoon & Co.*,<sup>[5]</sup> *Amar Chand Inani vs. The Union of India*,<sup>[6]</sup> *Harshad Chimanlal Modi (II) vs. DLF Universal Ltd.*<sup>[7]</sup>, and *Hasham Abbas Sayyad vs. Usman Abbas Sayyad*<sup>[8]</sup> to contest the case in Delhi.

The counsel for Respondent submitted that the appellant in its objection did not raise the ground under the exclusion clause 16B of the agreement, but limited it to the grounds that no business was carried on in Gurgaon and that the appellant was not residing there. The Counsel also submitted that the High Court on 05.09.2017 had consciously directed for the return of the file. Nothing was stopping the High Court from directing the return of the plaint.

The Trial Court has stated that the High Court's order for the return of the file was based on the presumption of the advanced stage of the case for the continuation of the same in Delhi, as otherwise, it might be a violation of justice if the case were to continue *de novo* in Delhi. The counsel for Respondent had relied on *R.K. Roja vs. U.S. Rayudu*<sup>[9]</sup>,

#### Judgment

After hearing the arguments of both the parties and considering the *Joginder Tuli (supra)*, the Hon'ble bench observed that the suit has got to proceed afresh before the right court and there's no discussion of the law and therefore it has no precedential value as laying down any law.

In the *Modern construction (Supra)* case, it had been held that after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and therefore the trial is to be conducted *de novo* albeit it stood concluded before the court has no competence to undertake an equivalent.

Further, the Hon'ble bench observed that they have not found any conflict in the law as set out in the *Modern Construction (supra)* that is pronounced after consideration of the law and precedents that require reconsideration in view of any inconsistency with *Joginder Tuli (supra)*. *Modern Construction (supra)* established the correct law. The bench answers the reference accordingly.

The Hon'ble bench also observed that now the statutory scheme gets clear. In

cases involving the transfer of proceedings from a court of jurisdiction to another court, the discretion conferred by Sections 24(2) and 25(3) on the court to either retry the proceedings or proceed from the transfer or withdrawal of such proceedings is in stark contrast to the scheme referred to in Order VII Rule 10 read in Rule 10-A where no such discretion is given and the proceeding has to commence de novo.

The Hon'ble bench has also overruled the judgment in the matter of *Oriental Insurance Company Ltd. (supra)* where it was held that according to the insertion of Rule 10A to Order VII, it can not be said that under all cases, a fresh filing shall be considered to be the return of a petition to the concerned court.

#### Conclusion

It was a relevant question of law before the Hon'ble Supreme Court, which was transferred to the upper bench to make a decision. When the case according to Order VII Rules 10 and 10A is restored, will the trial begin de novo or continue from the point it was transferred? The Hon'ble bench has rightly dealt with the question of law and clearly understood and elaborated the law while going through its previous judgment which we have discussed above.

However, the Hon'ble Court further noticed that section 24(2) and section 25(3) of CPC may be a contrast to Order VII Rule 10 and 10A and the Hon'ble Court has clearly explained that why should the proceeding has to commence de novo. In my opinion, it had been a commendable judgment that clearly stated the relevancy of Order VII Rule 10 and 10A and its uses to urge the law more understandable.

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- [1] Civil Appeal No(s). 2904 of 2020 & 2020 SCC OnLine SC 621
  - [2] start from the beginning.
  - [3] (1997) 1 SCC 502
  - [4] (2014) 1 SCC 648
  - [5] AIR 1929 PC 103
  - [6] (1973) 1 SCC 115
  - [7] (2006) 1SCC 364
  - [8] (2007) 2 SCC 355
  - [9] (2016) 14 SCC 275
  - [10] (2019) 9 SCC 435

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