

(2026) 08 P&H CK 0455
In the Punjab And Haryana At Chandigarh
Case No : FAO-CARB No.23 of 2024(O&M)

Hartej Estates Pvt. Ltd.

APPELLANT

Vs

Brahm Prakash

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Commercial Courts Act, 2015 — Section 13
Code of Civil Procedure, 1908 — Order 7 Rule 11, Section 151
Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2026) 08 P&H CK 0455

Hon'ble Judges : Suvir Sehgal, J;Deepinder Singh Nalwa, J

Bench : Division Bench

Advocate : Mr. Kunal Dawar, Senior Advocate with Ms. Shruti Mandhotra, Advocate for the appellant. Mr. Kushagra Mahajan, Advocate for the respondent.

Final Decision : Appeal dismissed, with no order as to costs

Judgement

SUVIR SEHGAL, J.

1. This appeal has been filed under Section 13 of the Commercial Courts Act, 2015 assailing order dated 06.02.2024 passed by learned Additional District and Sessions Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram, whereby, an application filed by respondents under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC ') has been accepted and Objection Petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act') has been dismissed on the ground of maintainability.

2. The genesis of the dispute between the parties is a Development Agreement dated 29.02.2008 (Annexure A-3) for construction etc. of a Commercial/ Information Technology Complex in Gurugram. Some disputes arose between the parties which were referred to a sole arbitrator appointed under the Agreement, who passed an award dated 02.11.2022 upholding the termination of the Development Agreement by the respondents and directing a partial refund of the

security deposit. Appellant filed an Objection Petition under Section 34 of the Arbitration Act and upon notice, respondents filed an application under Order 7 Rule 11 CPC which has been accepted by order impugned herein.

3. Learned Senior Counsel for the appellant has vehemently argued that procedural laws are merely handmade to justice. He submits that when a petition is filed with a defective resolution of the Board of Directors, with some minor defects or irregularity of signatures, it is a curable defect and should not lead to its automatic dismissal without any reasonable opportunity to the petitioner to rectify the defect. He asserts that right to challenge an award should not be defeated on technicalities. He has placed reliance upon judgment passed by Hon'ble the Supreme Court titled as **Vidyawati Gupta and others Vs. Bhakti Hari Nayak and others, (2006) 2 SCC 777**, to contend that the Court has the discretion to permit a party, who has acted in good faith to remove the shortcoming and once it is done, it will relate back to the date of presentation of the petition. By making a reference to the judgment passed by Bombay High Court titled as **Palmview Investments Overseas Ltd Vs Ravi Arya and others, 2023 AIR (Bombay) 365**, it has been emphasized that even if a petition is filed by a company with a defective board resolution or even without such a resolution, it is not fatal and must be permitted to be cured. He urges that procedural faults which do not go to the root of the matter should not be permitted to defeat a just cause.

4. Opposing him, counsel for the respondents has urged that the Objection Petition was not supported by a valid authorization from the appellant - M/s Hartej Estates Pvt. Limited. Instead, he points out that the petition bore stamp and seal, board resolution dated 29.05.2023 as well as supporting affidavits are of another legal entity, M/s Emaar India Limited, which was never a party to the arbitral proceedings. He has supported the order passed by the Commercial Court.

5. We have given a thoughtful consideration to the rival submissions of counsel for the parties as well as examined the paper-book.

6. There is no dispute about the legal position. A substantive right should not be defeated on account of procedural irregularity which is curable. Procedural defects regarding signatures, affidavits, authority to present appeals, petitions or documents do not invalidate the filing if they are unintended. Such omission or defect being one relatable to procedure, can subsequently be corrected. It has been held by Hon'ble the Supreme Court in **Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and another, (2006) 1 SCC 75**, that a procedural defect will entail an automatic dismissal or rejection of a case where procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it.

7. Turning to the facts of the present case, record shows that an Objection Petition under section 34 of the Arbitration Act was filed on 03.08.2023

(Annexure A-4). Respondents pointed out the defect in the Objection Petition by filing an application under Order 7 Rule 11 CPC on 26.10.2023 (Annexure A-5). Appellant filed a reply to the application on 13.11.2023 (Annexure A-6) wherein it was explicitly stated in para 13 thereof that it was "separately filing the rectified statement of truth, supporting affidavits and Board Resolution of the Petitioner Company". From the date of filing of the reply till the passing of the order, appellant failed to file a resolution passed by the Board of Directors of the appellant or the statement of truth supported with an affidavit. Mere taking a stand in the reply and pleading that an application is being filed does not satisfy the requirement of law. Appellant was expected to act in an expeditious manner especially in view of the rigid timelines laid down under the Arbitration Act.

8. Record reveals that appellant is a subsidiary company of M/s Emaar India Limited. Both appellant as well as M/s Emaar India Limited are distinct legal entities with a separate Board of Directors to run their business affairs. An Objection Petition filed by the appellant was verified, signed, stamped and authorized by the parent company, M/s Emaar India Limited, shows absence of any authority from the appellant. Although, the defect is a curable one but appellant's total failure to rectify it despite being aware of it does not entitle it to claim any protection. A Court cannot proceed with and adjudicate a patently defective and unauthorized petition when a party shows complete disregard in filing proper documentation. Furthermore, it also deserves to be noticed that during the course of argument learned Senior Counsel has made a reference to a Resolution dated 04.08.2023 (Annexure A-1) at page 194 of the paper book, to contend that Board of Directors of appellant had authorized Mr. Ramesh Chandra Khulbe to file an Objection Petition. It is therefore evident that Objection Petition having been instituted by Mr. Khulbe on 03.08.2023 (Annexure A-4) was filed by a person who was not authorized to do so. Reliance placed upon both the judgments by the appellant would not advance his case as appellant has shown complete apathy towards the Court proceedings. Consequently, as the defect in the Objection Petition remained unrectified even after being pointed out, Commercial Court was left with no option but to dismiss the Objection Petition as not maintainable.

9. This court is of the view that the impugned order dated 06.02.2024 does not suffer from any illegality or perversity. Appeal is accordingly dismissed though with no order as to costs.

10. All pending miscellaneous application(s), if any, shall stand disposed of.