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

CR-9025-2025

Date of Decision: 17.07.2026

AIR PLAZA RETAIL HOLDINGS PVT LTD

..... Petitioner

Versus

JITENDER KUMAR AND ORS.

..... Respondents

CORAM: HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Ashim Aggarwal, Advocate
for the petitioner.

Mr. Perna Gupta, Advocate (Through V.C.)
for the respondents.

LAPITA BANERJI, J. (Oral)

1. In the present civil revision, an order dated October 27, 2025, passed by the learned Additional District Judge, Faridabad (hereinafter referred to as 'the ADJ'), has been impugned by the petitioner.

2. Learned counsel appearing on behalf of the petitioner assails the impugned order on the following grounds:-

(i) The attornment agreement referred to by the learned ADJ, Faridabad did not contain an arbitration clause entered into by and between the parties.

(ii) The respondents-defendants could not have prayed for the disputes and differences to be referred under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act"), after filing their first



statement of defence.

(iii) In the event, the learned ADJ, Faridabad, was of the opinion that all the clauses of the lease agreement dated September 5, 2013, were incorporated in the attornment agreement entered into by and between the parties, then the clause with regard to only the Courts at Gurugram having exclusive jurisdiction, in the event disputes and differences arose between the parties, had to be considered, and the plaint had to be returned for want of jurisdiction.

3. Learned counsel appearing on behalf of the petitioner, elaborating on his arguments, submits that under Section 8 of the 1996 Act, it is clearly stipulated that when a party brings an action for referring the subject matter of a dispute to arbitration by relying on an arbitration agreement, he is mandatorily required to do so before filing his first statement on the substance of the dispute.

4. Since the first statement of defence was filed on July 4, 2024, and the application for appointment of the Arbitrator was filed on November 25, 2024 before this Hon'ble Court, the application under Section 8 of the 1996 Act read with Order VII Rule 11 of the Code of Civil Procedure, 1908, should not have been entertained by the learned ADJ, Faridabad, vide the impugned order dated October 27, 2025.

5. In support of his contention, he relies upon the judgment of Division Bench dated January 9, 2025 of the Calcutta High Court in '*Gitarani Maity Vs. Krishna Chakraborty and Ors*' reported in **2025 SCC OnLine Cal 2462** and the judgment dated April 14, 2003 of Hon'ble Supreme Court of India in ***Civil Appeal No.1174 of 2002***,

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‘Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Ors’ reported in ***(2003) 5 SCC 531.***

6. *Per contra*, learned counsel appearing on behalf of the respondents, relies upon the attornment agreement dated October 28, 2021 to submit that all the terms and conditions of the agreement of lease would continue to remain in force and be binding on the parties, apart from the ones specifically incorporated in the said attornment agreement. Therefore, by consent of the parties, the arbitration clause was incorporated in the attornment agreement dated October 28, 2021.

7. She also refers to para 4.1 of the written statement filed on behalf of the respondents-defendants in the civil suit to argue that the issue with regard to the entertainability/maintainability of the suit was agitated at the first instance. The respondent had contended that the disputes had to be relegated to arbitration.

8. This Court has heard the learned counsel for the parties and perused the material on record.

9. It is true that under clause 9 of the Attornment Agreement, all the clauses of the previous lease agreement were incorporated. Therefore, the plaintiffs/petitioners cannot be permitted to argue that no arbitration clause existed between the parties.

10. It is also true that under Clause 19 of the lease deed, all the disputes and differences were required to be settled by the Courts at Gurugram. However, the plaintiffs themselves chose to file the suit before the Court at Faridabad. Therefore, today the plaintiffs-petitioners cannot be permitted to argue that the learned ADJ should have sent the



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subject matter of the dispute to the Courts at Gurugram when the plaintiffs themselves willingly submitted to the jurisdiction of the Court at Faridabad. Lack of territorial jurisdiction cannot be equated with lack of inherent jurisdiction as it does not go to the very root of the subject matter. There is a catena of judgments of the Supreme Court on this issue. A beneficial reference can be placed on the judgment of the Apex Court in ***Sneh Lata Goel versus Pushplata and others*** reported in (2019) 3 SCC 594. At best an order passed without territorial jurisdiction is a voidable order which cannot be interfered with unless prejudice is shown by the petitioner.

11. With regard to the argument raised regarding the statutory mandate of filing an application under Section 8 of the 1996 Act prior to the filing of the first statement of defence, this Court notices that in the said statement of defence, the respondents-defendants categorically raised objections to the maintainability of the dispute before the Commercial Courts. It has been clearly stated that the disputes and differences should be adjudicated only by way of arbitration under the 1996 Act.

12. This Court has perused the judgment of ***Sukanya Holdings Pvt. Ltd.*** (supra). The facts of the said case are completely distinguishable, as an application under Section 8 of the 1996 Act was kept pending for adjudication for a long time.

13. In such circumstances, the Hon'ble Apex Court held that, except under Section 8 of the 1996 Act, there was no provision under the Act whereby the dispute could be referred to arbitration by bifurcating the disputes as some of the disputes were outside the scope of arbitration agreement. Furthermore, it was clarified the subject matter of the dispute



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would not be required to be referred to an Arbitral Tribunal if the parties to an arbitration agreement do not file an application for such referral under Section 8 of the 1996 Act, or file such an application after the filing of the first statement on the substance of the dispute, or if the application under Section 8 of the 1996 Act is not accompanied by the original arbitration agreement or a duly certified copy thereof or which part of the dispute had to be bifurcated is neither pleaded nor argued by the petitioner.

14. Upon perusal of the written statement in the present case, it unambiguously transpires that the respondents/defendants had objected to the jurisdiction of the Civil Court due to the arbitration agreement existing between the parties. Therefore, it cannot be contended that objection to jurisdiction of the Civil Court was taken after first statement of substantive defence was taken.

15. The judgment of the Division Bench of the Calcutta High Court in *Gitarani Maity* (supra) is distinguishable, since the trial Court dismissed the suit on an application filed under Section 8 of the 1996 Act instead of referring the same to arbitration. Furthermore, in that case, the defendants took out the application under Section 8 of the 1996 Act only after filing the substantive written statement. Therefore, the case of *Gitarani Maity* (supra) also does not support the case of the petitioners in their challenge to the impugned order passed under Section 8 of the 1996 Act.

16. In view of the aforesaid discussion, the present civil revision i.e. CR-9025-2025 is **dismissed**.

17. There is no order as to costs.

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18. Pending misc. application (s), if any, shall also stand disposed of.

(LAPITA BANERJI)
JUDGE

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No