

08.08.2026

Present: None

Put up for orders at 4 PM

(Akbar Siddique)
DJ-04, North, Rohini Courts,
Delhi/08.08.2026

At 4 PM

Present: None.

ORDER

1. Vide the present order, I shall dispose of the objections raised by the plaintiff with respect to the contentions raised by defendant no. 2 and 3 that after the return of plaint u/o 7 Rule 10 A and 10 B CPC, the trial to be conducted De Novo.
2. It is the case of the defendant no. 2 and 3 that the present plaint was returned by the court of DJ-03, North West vide its order dt. 17.03.2025. Thus, in view of the return of the plaint the trial shall take place denovo in view of the judgment of the Hon'ble Supreme Court in *M/s Exl Careers & Anr Vs. Frankfinn Aviation Services Pvt. Ltd., CA no. 2904/2020 decided on 05.08.2020.*
3. Pertinently, the right to file the written statement of defendant no.1 and 2 was struck off by the previous court vide order dt. 28.11.2024.

4. Conversely, opposed by Ld. Counsel for plaintiff on the ground that the para 27 of the *M/s Exl Careers & Anr (Supra)* distinguishes the case of the defendant no.2 and 3 and the conduct of the defendant no.2 and 3 be also taken into consideration.
5. Heard. Considered.
6. The arguments of the Ld. Counsels revolves around the judgment of Hon'ble Supreme Court in *M/s Exl Careers & Anr Vs. Frankfinn Aviation Services Pvt. Ltd, CA no. 2904/2020 decided on 05.08.2020.* Ergo, I deem it appropriate to refer to the relevant paragraphs which are as follows:

15. That brings us to the order of the reference to be answered by us. In Joginder Tuli (supra) the original court lost jurisdiction by reason of the amendment of the plaint. The Trial Court directed it to be returned for presentation before the District Court. This Court observed as follows:

“5. ... Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.”

To our mind, the observations are very clear that the suit has to proceed afresh before the

proper court. The directions came to be made more in the peculiar facts of the case in exercise of the discretionary jurisdiction under Article 136 of the Constitution. We may also notice that it does not take into consideration any earlier judgments including Amar Chand Inani vs. The Union of India (supra) by a Bench of three Honourable Judges. There is no discussion of the law either and therefore it has no precedential value as laying down any law.

16. Modern Construction (supra), referred to the consistent position in law by reference to Ramdutt Ramkissen Dass vs. E.D. Sassoon & Co., Amar Chand Inani vs. The Union of India, Hanamanthappa vs. Chandrashekharappa, (1997) 9 SCC 688, Harshad Chimanlal Modi (II) (supra) and after also noticing Joginder Tuli (supra), arrived at the conclusion as follows:

“17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction,

the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.” Joginder Tuli (supra) was also noticed in Harshad Chimanlal Modi (II) (supra) but distinguished on its own facts.

17. We find no contradiction in the law as laid down in Modern Construction (supra) pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli (supra). Modern Construction (supra) lays down the correct law. We answer the reference accordingly.

21. The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order VII Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo.

27. In the peculiar facts and circumstances of the case, because the appellant did not raise the objection under clause 16B of the agreement at the very first opportunity, the first order of rejection attained finality, the objection under clause 16B was raised more as an afterthought, the second application

under Order VII Rule 10 had to be preferred by the respondent, that pleadings of the parties have been completed, evidence led, and that the matter was fixed for final argument on 03.07.2017, we are of the considered opinion that despite having concluded that the impugned order is not sustainable in view of the law laid down in the Modern Construction (supra), in exercise of our discretionary jurisdiction under Article 136 of the Constitution and in order to do complete and substantial justice between the parties under Article 142 of the Constitution in the peculiar facts and circumstances of the case nonetheless we decline to set aside the impugned order of the High Court dated 13.03.2018.

7. On examining the aforesaid judgment, it is clear that when the plaint is directed to be returned for presentation to the proper court it has to start from the beginning. Keeping in view of the fact that the case was at the initial stages before the earlier court only the right to file the written statement qua Defendant no.2 and 3 was closed vide order dt. 28.11.2024.
8. I am of the humble opinion that no impediment or directions are incorporated in the aforesaid judgment which precludes the present suit to start de novo.
9. On further examination of the aforesaid judgment, the Hon'ble Supreme Court heavily relied on the judgment ***Modern Construction***, which categorically held that if the court, where the suit is instituted, is of the view that it has

no jurisdiction, the plaint is to be returned as per the mandate of Order VII Rule 10 CPC. After the return of the plaint before the court having jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo.

10. Ergo, in view of the settled mandate laid down by the Hon'ble Supreme Court, I am of the humble opinion that the present suit is to be conducted de novo as the plaint was returned by the previous court vide its order dt. 17.03.2025 under Order VII Rule 10 CPC.
11. Pertinently, in the present case, the summons were issued on 02.08.2025 and after the issuance of the summons, defendants have entered appearance.
12. Furthermore, the objections raised by the Ld. Counsel for plaintiff in terms of the para no. 27 of the *M/s Exl Careers & Anr (Supra)* is liable to be rejected on the ground that in para no. 27 the Hon'ble Supreme Court has exercised its power under Article 142 of the Constitution of India as the case was at the advance stage i.e. at the stage of final arguments. Thus, it has to be treated as an exception.
13. Ergo, in my humble opinion the present case should be conducted de novo, in view of the return of the plaint by the previous court vide its order dt. 17.03.2025, under Order VII Rule 10 CPC. The objection raised by the plaintiff is hereby rejected.
14. In the present case, all the defendants have entered appearance and written statement of Defendant no. 1 is already on record. *Thus, defendant no.2 and 3 are given an opportunity to file written statement within 30 days from*

this date of passing of this order with an advance copy to the opposite party.

15. Accordingly, put up on 08.10.2026

(Akbar Siddique)
DJ-04, North, Rohini Courts,
Delhi/08.08.2026