

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**Arb App No. 01/2021  
CM No. 6039/2021**

*Dated: 28<sup>th</sup> of September, 2021.*

Adil Ashraf Bolaki

**... Appellant(s)**

**Through:**

Mr Aatir Javed Kawoosa, Advocate with  
Mr Musharaff W. Baba, Advocate.

*Versus*

JK Power Transmission Corporation Limited & Ors.

**... Respondent(s)**

**Through: -**

Mr Jahangir Iqbal Ganai, Senior Advocate with  
Ms Humaira Shafi, Advocate; and  
Mr Hakeem Aman Ali, Dy. AG.

**CORAM:**

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge.  
Hon'ble Mr Justice Sanjeev Kumar, Judge.**

**(JUDGMENT)**

*Per Magrey, J: Oral;*

01. This is an appeal filed by the Appellant under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") against the Judgment dated 1<sup>st</sup> of September, 2021 passed by the learned Single Bench in AA No. 07/2021 filed by the Appellant, in terms whereof the Application filed by the Appellant stands dismissed.

02. The brief facts leading to the filing of this Appeal, as come to limelight from the perusal of the pleadings on record, are that the Appellant

claims to have been accorded contract for installation of 132 KV Cable laying job for the Jammu and Kashmir Power Transmission Corporation Limited (for short “JKPTCL”) Srinagar, at Tengpora GIS Substation, vide letter No. EHV-373/JKPTCL/20-21/11 dated 10<sup>th</sup> of September 2020, whereafter he started execution of work strictly in terms of said letter and terms and conditions of the contract and that the same is being carried out by him without any failure on his part. It is stated that as per serial No.40 to Annexure-A to the abovementioned communication/contract allotted in favour of the Appellant, he was required to supply and install 400 Mts of Copper Cable for Road Crossing through HDPE pipes, including supply of HDPE pipes, in trenchless digging and restoration as per specifications. It is also stated that during execution of work contract, it came to surface that road crossing through HDPE pipes could not be completed within prescribed quantity, i.e., 400 Mts., and that the Appellant informed the Respondents about the same and, accordingly, the Respondents visited the work site and after inspection concluded that work could not be completed within the given measurements/quantity, i.e., 400 Mts and thus, they orally directed the Appellant to install extra cables and HDPE pipes required for completion of job. It is claimed by the Appellant that the Respondents assured the Appellant that work contract would be amended and he would be paid for extra work and expenses incurred and increase would be added in final bill strictly in lieu of rate fixed. It is also stated that he undertook the work of installation of extra cables and HDPE pipes and in this regard made certain communications as

well, but Respondents failed to reply. It is further contended that the General Conditions of Contract annexed as Annexure-I to the Work Contract contain an Arbitration Clause, i.e., Clause 11 and therefore, the Appellant served a notice invoking arbitration, which is said to have been replied by the Respondents. It is averred that the Respondent No.1 is in the process of releasing further payments in favour of Respondents 2&3. It is maintained by petitioner that he had filed a Petition under Section 9 of the Act of 1996 before the Court of learned 3<sup>rd</sup> Additional District Judge, Srinagar, wherein, on 17<sup>th</sup> of June 2021, an Order of status quo was passed. Thereafter, as stated, the Appellant claims to have observed that General Condition of Contract had not been signed by him, as such, he thought that the provisions of Section 9 of the Act would not be proper remedy, so he filed a civil Suit before the learned Chief Judicial Magistrate, Srinagar and, accordingly, withdrew the arbitration Petition. In the said civil Suit, the learned Chief Judicial Magistrate, Srinagar, vide Order dated 12<sup>th</sup> of July 2021, is stated to have dismissed the application for grant of *ad interim* injunction with the observation that the arbitration agreement is valid. Consequently, the Appellant claims to have withdrew the said Suit and filed the petition under Section 9 of the Arbitration and Conciliation Act before the learned Single Judge. The learned Single Judge, vide the impugned Judgment dated 1<sup>st</sup> of September, 2021, has dismissed the said Petition filed by the Appellant.

03. Mr Aatir Javed Kawoosa, the learned Counsel representing the Appellant, submitted that the Petition of the Appellant filed under Section 9 of the Act of 1996 has been dismissed by the learned Single Judge without appreciating the contentions raised by the Appellant supported by the scheme of law and the judgments passed by the Supreme Court. It is submitted that the Appellant, in order to safeguard his rights guaranteed under the Act of 1996 *qua* protecting the *lis*, had sought the relief of stopping the payment in favour of Respondents 2 and 3 till the dispute between the parties was resolved in arbitration, which was not, in any manner, beyond the scope and mandate of Section 9 of the Act of 1996. It is pleaded that compliance with Section 11 of the Act of 1996 is not a condition precedent for seeking interim relief under Section 9 of the Act which fact has been wrongly considered and finding returned by the learned Single Judge. The next contention raised by the learned Counsel for the Appellant is that the learned Single Judge has wrongly interpreted the arbitration clause as provided under Clause 11(1) by holding that the jurisdiction was at Satna, Madhya Pradesh and has not appreciated the fact that the subject matter of the dispute was in Srinagar where the work was executed, agreement(s) drawn and cause of action accrued. In support of his contentions, the learned Counsel has referred to and relied upon judgment rendered by the Apex Court in case reported as *'(2012) 9 SCC 552'*.

04. Mr Jahangir Iqbal Ganai, the learned Senior Counsel, representing the Respondents 2 and 3, submitted that the Judgment passed by

the learned Single Judge has been passed in tune with the mandate of law and does not call for any interference from this Court. It is submitted that the Petition filed by the Appellant before the learned Single Judge was a gross abuse of process of law, besides same was filed on misrepresentation and suppression of facts. It is contended that a party approaching the Court with unclean hands is not entitled to any relief prayed for. The learned Senior Counsel avers that in case the relief sought for by the Appellant in the Petition filed before the learned Single Judge was/ is granted, then, in such eventuality, the entire project will get derailed, thereby causing great loss to public interest.

05. We have heard the learned Counsel for the parties and have also gone through the pleadings on record.

06. The learned Single Judge has dismissed the Petition filed by the Appellant under Section 9 of the Act of 1996 seeking grant of interim relief by holding that it cannot usurp the jurisdiction of the arbitral Tribunal even at a pre-arbitration stage. This finding of the learned Single Judge cannot be said to be erroneous when there is a clear arbitration clause provided in the agreement between the parties. Merely because it is easier to obtain interim relief from a Court rather than from an arbitrator or arbitral tribunal, the Court cannot allow the Appellant to invoke the jurisdiction of the Court by filing Petition under Section 9 of the Act of 1996, instead of availing the remedy of arbitration as provided in the agreement between the parties. Besides, in terms of Clause 11.1 of the General Conditions of Contract, it is clearly provided

that any dispute or different whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of the contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration (ICA) and the award made in pursuance thereof shall be binding on the parties.

07. There is no denial of the fact that in case a party clearly shows that it intends to initiate arbitral proceedings, but in view of the emergent circumstances rendering the requirement of seeking interim measures as necessity not awaiting proceedings under Section 17 of the Act before the Arbitrator or Arbitral Tribunal, he may approach the Court by filing Petition under Section 9 of the Act for seeking the interim relief. However, in the case in hand, the conduct of the Appellant has been such that no leverage can be granted to him on that count too. This is so because, on the one hand, the Appellant, on 17<sup>th</sup> of June, 2021, filed Petition under Section 9 of the Act, whileas, on the same day, he filed a civil Suit too on the same subject matter seeking the same relief, thereby making it clear beyond any shadow of doubt that no emergent necessity existed for grant of interim relief, as otherwise he would not have withdrawn the Petition under Section 9 and pursued the same vigorously.

08. The other important aspect on which the learned Single Judge has dismissed the Petition under Section 9 of the Act filed by the Appellant is with regard to jurisdiction being at Satna (Madhya Pradesh). The submission

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of the learned counsel for the Appellant, in this behalf, is that Satna, Madhya Pradesh, was only accepted as a mere venue of arbitration and thus the learned Single Judge had the jurisdiction to try and entertain the application under Section 9 of the Act of 1996. This submission of the learned counsel for the Appellant is also misdirected inasmuch as in terms of Clause 11.2 of the General Conditions of Contract, it is specifically provided that the Contract shall be governed by the laws of India and Courts at Satna alone shall have the jurisdiction in the matter. The Judgment of law cited and relied upon by the learned Counsel for the Appellant in support of his arguments, being distinguishable on facts, is not applicable to the facts and circumstances of the present case.

09. In the result, we do not find any illegality or perversity in the judgment rendered by the learned Single Judge which is hereby upheld. Consequently, the instant Appeal fails and shall stand, accordingly, *dismissed*, along with the connected CM. Interim direction(s), if any, subsisting as on date shall stand vacated.

**(Sanjeev Kumar)**  
**Judge**

**(Ali Mohammad Magrey)**  
**Judge**

**SRINAGAR**

September 28<sup>th</sup>, 2021

*"TAHIR"*

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|-----|--|-----------------|
| i.  | <i>Whether the Judgment is reportable?</i> | <i>Yes/ No.</i> |
| ii. | <i>Whether the Judgment is speaking?</i>   | <i>Yes/ No.</i> |