

S. No.157
Suppl List 1

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Uploaded on 29.04.2026

Arb. P No. 15/2021
CM(5098/2025),CM(5426/2021)
CM(6481/2021) CM(8349/2025)

CHIEF ENGINEER AND ANOTHER

.....Petitioner(s)

Through: Mr.Ilyas Nazir Laway,GA.

V/s

**VISTASTA CONSTRUCTION GOODLUCK CONSTRUCTION AND
ORS**

... ..Respondent(s)

Through : Mr. R.A.Jan, Sr. Advocate
with Mr.Ubaid Mir, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

24.04.2026

1. The petitioners, have through the medium of present petition under Section 34 of the J&K Arbitration and Conciliation Act 1997 (hereinafter the Act of 1997), challenged award dated 23.04.2016 passed by the sole Arbitrator. During the course of hearing, it was noted by this Court that the respondent/award holder had preferred an application under Section 9 of the Act of 1997 before the Court of learned Principal District Judge, Anantnag on 27.12.2010 which came to be decided by the said Court on 28.06.2011. In terms of Section 42 of the Act of 1997, where with respect to an arbitration agreement an application

under Part I of the said Act has been made in a Court, that Court alone has the jurisdiction over the arbitral proceedings as well as all subsequent applications arising out of the said agreement and the arbitral proceedings have to be made in that same Court and not in any other Court.

2. In view of aforesaid legal position, it was felt that the petitioners ought to have filed the petition under Section 34 of the Act of 1997 before the Court of learned Principal District Judge Anantnag, but instead of doing so the petitioners have filed the instant petition before this Court. The learned counsel for the petitioners when confronted with this position had sought time to address the arguments and the matter was adjourned for today.

3. I have heard learned counsel for the parties on the aforesaid issue and I have also perused record of the case.

4. Learned counsel for the petitioners has contended that the Arbitrator was appointed pursuant to directions passed by this Court in a petition under Section 11 of the Act of 1997 by virtue of order dated 03.05.2023, therefore, this Court has jurisdiction to entertain the instant petition. He has further contended that the Supreme Court recently in the case of *J&K Economic Reconstruction Agency vs. Rash Builders India Pvt.Ltd.*, decided on 15.04.2026 in SLP(C) @Diary No.44792 of 2025 has

held that petition under Section 34 of the Act of 1997 can be filed before the Court located at the seat of arbitration and in this case because arbitration proceedings were held at Srinagar, as such, this Court has jurisdiction to entertain the present petition. It has also been contended that the petition under Section 9 of the Act of 1997 was dismissed by learned District Judge Anantnag on the ground of lack of jurisdiction and, therefore, filing of petition before the said Court would not come in the way of entertaining of instant petition by this Court.

5. There is no dispute to the fact that the petition under Section 9 of the Act of 1997 came to be filed by the respondent herein before the Court of learned Pr.District Judge Anantnag on 27.12.2010 and the same was dismissed vide judgment dated 28.06.2011 passed by the said Court. A perusal of the said judgment would reveal that the same has not been dismissed by the learned District Judge on the ground of lack of inherent jurisdiction but it has been dismissed on the ground that the Court has no jurisdiction to grant a relief relating to extension of an agreement, which is determinable in its nature when the contract stands already terminated. Thus, the contention of the learned counsel for the petitioners that learned District Judge Anantnag lacked inherent jurisdiction to entertain the petition under Section 9 of the Act of 1997 is misconceived.

6. So far as the judgment passed by the Supreme Court in the case titled *J&K Economic Reconstruction Agency vs. Rash Builders India Pvt.Ltd.*(supra) is concerned, the facts involved in the said case were entirely different, inasmuch as, the Court was dealing with an issue whether the jurisdiction of a Court has to be determined with reference to the seat of the arbitration agreed to by the parties in the contract or with reference to the venue of the arbitration. It is in those circumstances that the Supreme Court held that designation of seat of arbitration would determine the Court which has jurisdiction over the arbitral proceedings. The issue involved in the present case is entirely different, hence the ratio laid down by the Supreme Court in the aforesaid judgment is not applicable to the present case.

7. The third contention that has been raised by learned counsel for the petitioners is that petition under Section 11 of the Act of 1997 was filed before this Court, pursuant where to Arbitrator was appointed under the orders of this Court, therefore, the instant petition can be entertained by the High Court.

8. I am afraid the aforesaid contention urged by learned counsel for the petitioners is without any substance. The issue as to whether the Court which deals with an application under Section 11 of the Act of 1997, falls within the definition of Court as contained in Section 2(1)(e) of the Act of 1997, has been

conclusively determined by a Full Bench of this Court in the case of *Ramesh Chand Kathuria and Anr. vs. M/S Trikuta Chemicals Pvt.Ltd. and Anr.*, AIR 2015 J&K 52 by holding that applications under various provisions of the Act which include Section 8, Section 11 and interim measure under Section 17 dealt with by the authorities are not the Courts within the meaning of Section 2(1)(e) of the Act. Therefore, Section 42 of the Act is not attracted.

9. In view of aforesaid position of law, merely because application under Section 11 of the Act of 1997 has been decided by this Court cannot give jurisdiction to this Court to entertain petition under Section 34 of the Act, if any of the parties has invoked the jurisdiction of any other Court by filing an application under Section 9 of the Act of 1997.

10. In the present case, the petition under Section 9 of the Act of 1997 was filed by the respondent before the Court of learned Principal District Judge Anantnag. Therefore, all the subsequent applications relating to arbitral proceedings, including petition under Section 34 of the Act had to be filed before the same Court and not before any other Court. The instant petition, as such, ought not to have been entertained by this Court.

11. Learned Senior Counsel appearing for the respondents has submitted that if this Court decided to transfer the writ petition

to the Court of learned Principal District Judge, Anantnag, the interim order granted by this Court on 24.03.2021 needs to be vacated. The issue whether the said order is required to be continued or the same should be rescinded shall be gone into by the Court of learned Principal District Judge, Anantnag, notwithstanding the fact that the said order has been passed by the High Court.

12. In view of the foregoing discussion, the petition is directed to be transferred to the Court of learned Principal District Judge, Anantnag for its disposal under law. It is pertinent to mention here that Principal District Judge Anantnag stands designated as Commercial Court and the subject matter of the present petition being a commercial dispute in arbitration proceedings is required to be decided by the said Court in its capacity as Commercial Court.

13. The parties are directed to appear before the Commercial Court (Principal District Judge) Anantnag on 02.06.2026. The registry shall remit original record of the case to the transferee Court.

(SANJAY DHAR)
JUDGE

SRINAGAR
24.04.2026
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes