

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE CHIEF JUSTICE SRI VIPIN SANGHI
HON'BLE JUSTICE SRI RAKESH THAPLIYAL, J.

October 16, 2023

Appeal from Order No. 411 of 2023

Nathi Singh Negi Appellant.
Versus
Garhwal Mandal Vikas Nigam Ltd. Respondents.

Counsel for the appellant

Mr. V.K. Kaparawn.

Counsel for the respondents:

Mr. Sandeep Kothari.

**Upon hearing the learned Counsel, the Court made the following Order:
(per Sri Rakesh Thapliyal, J.)**

1. The present appeal from order has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the order dated 09.10.2023, passed by the learned Addl. District Judge/Commercial Court, Dehradun in Arbitration Case No. 58 of 2023, Nathi Singh Negi vs. Garhwal Mandal Vikas Nigam Limited & Others whereby an application seeking interim injunction has been rejected.

2. The case of the appellant was that a mining contract was awarded to the appellant, however, the work order was issued belatedly and the appellant could not execute mining contract for a period of three months. A demand was raised by the Garhwal Mandal Vikas Nigam (hereinafter referred to as GMVN) for an amount of Rs. 41,68,000/- from the appellant which was assailed in a Writ Petition (M/S) No. 1345 of 2022 with the following relief:—

- “(i) A writ order or direction in the nature of certiorari quashing the letter dated 24.05.2022 issued by the GMVN being against the law.*
- (ii) A writ, order or direction in the nature of mandamus directing the respondent authorities to*

decide the representation dated 19.05.2022 of the petitioner (Annexure-8) in accordance with law.

The Division Bench of this Court vide judgment and order dated 26.04.2023 disposed of the writ petition and refused to entertain the writ petition on the ground that petitioner to approach the Arbitral Tribunal. It was further observed in the order that even if the arbitrator has not been appointed despite invocation of the arbitration agreement by the petitioner, it does not prevent the petitioner from invoking Section 11 of the Arbitration and Conciliation Act.

Earlier to this writ petition, two more writ petitions being WPMS No. 722 of 2022 and WPMS No. 346 of 2022 were preferred, and both the petitions were dismissed by the Co-ordinate Bench of this Court vide order dated 11.05.2022 with a liberty to invoke arbitration agreement ,since, arbitration clause exists between the parties.

3. Thereafter, the petitioner preferred arbitration case before the learned Addl. District Judge/Commercial Court, Dehradun which was registered as Arbitration Case No. 58 of 2023 under section 9 of the Arbitration and Conciliation Act. In the said arbitration case, it is pleaded that the respondent belatedly issued work order with enhanced monthly amount of royalty and arbitrarily increased the amount of royalty from Rs. 12,29,100/- to Rs. 16,38,800/-. It is further pleaded in the application that the applicant moved an application on 19.01.2022 before the respondent for invoking arbitration clause, instead of that respondent/department illegally issued a letter on 24.01.2022 whereby the appellant was asked to deposit the enhanced amount of royalty which the applicant disputed. It is further contended in the

arbitration application that the respondent is threatening the appellant by terminating his lease as well as by blacklisting the appellant and to issue recovery citation as per the Land Revenue Act to recover the amount. By moving the said arbitration application it is submitted that balance of convenience lies in favour of the applicant as no prejudice would be caused to the respondent if injunction is granted to the appellant, and on the other hand if the injunction is not granted a serious prejudice would be caused to the appellant. In the said application it is further submitted that the dispute as raised has not been resolved till date.

4. By moving arbitration application, an interim injunction was sought by the present appellant to stop further proceedings pursuant to the letter dated 18.05.2023 and 23.06.2023 including orders/letters relating to the termination of lease as well as blacklisting the appellant and recovery of amount due by issuing recovery citation as per the provisions of Land Revenue Act.

5. The interim injunction application was considered by the learned Addl. District Judge/Commercial Court, and while deciding the said application three issues were framed by the Commercial Court which are as follows:-

- (i) Prima facie case;
- (ii) Balance of convenience
- (iii) Irreparable loss.

6. So far as issue with regard to the prima facie case is concerned, the learned commercial court concludes that the petitioner has not presented the necessary forms to

prove its allegation and prima facie also failed to prove that respondent has demanded the outstanding dues without any reasonable basis. The Commercial Court has decided this issue against the appellant by taking into consideration that as per proviso (g) of Order 39 Rule 2 (2) of Code of Civil Procedure 1908 (U.P. Amendment) an injunction cannot be issued to postpone the recovery proceedings of any arrears recoverable as land revenue. The learned commercial court also held that neither sufficient security has been given by the appellant nor any such proposal has been made in respect of said security.

7. So far as issue no. 2 and 3 are concerned which pertains to balance of convenience and irreparable loss, the learned Commercial Court after taking into consideration two notices dated 18.05.2023 and 23.06.2023, i.e., paper no. 12C/1 and 12C/2 comes to the conclusion that the appellant has not deposited the monthly instalment within time as per rules. The Commercial Court further took into consideration that in the entire application there is no disclosure of the fact that when the monthly instalment was deposited and since when monthly instalment is due against him. The commercial court ultimately comes to the conclusion that the balance of convenience is not proved in favour of the appellant.

In respect of irreparable loss the commercial court observed in the order impugned order that there is an arbitration agreement and claim can be settled by the Arbitrator Tribunal, therefore, the fact of causing irreparable loss is also not proved.

8. After taking into consideration the observations and findings as recorded by the learned Addl. District Judge/ Commercial Court, Dehradun, we do not find any infirmity in the impugned order. The learned Commercial Court has rightly decided all the three issues against the appellant. As per the finding recorded by the Commercial Court, the appellant failed to produce the relevant documents in order to establish the prima facie case for grant of interim injunction. Even, there is no disclosure of the fact when the monthly instalments were deposited and how much monthly instalments are due against the present appellant. Therefore, the Commercial Court has rightly dismissed the interim injunction application, since, neither the appellant could establish the prima facie case in his favour nor the balance of convenience was proved. Therefore, we do not find any infirmity in the order impugned, rejecting the interim injunction application, i.e., paper no. 6C2.

9. During course of the arguments, Mr. V.K. Kaparwan, the learned counsel for the appellant submits that despite repeated request, by invoking arbitration clause the respondent has failed to appoint the Arbitrator. In reference to this, if it is so, that despite repeated request the respondent failed to appoint the Arbitrator then the appellant should invoke section 11 of the Arbitration and Conciliation Act for appointment of the Arbitrator to this Court which he has failed to do so. Therefore, we do not find any substance in this argument.

10. As we observed above that there is no perversity and illegality in the impugned order passed by the learned Addl. District Judge/ Commercial Court,

Dehradun, hence, the present appeal has no merit and is dismissed accordingly.

11. No order as to costs.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

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