

Sr. No.03

Suppl. List.

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

RP No.32/2022

M/S P. K. GLOBAL TRENDS PRIVATE ...Appellant(s)/Petitioner(s)
 LIMITED

Through: Mr. Shakir Haqani, Advocate

Vs.

AIRPORT AUTHORITY OF INDIA ...Respondent(s)

Through: Mr. M.M. Dar, Advocate with
 Mr. Zaffar Mehdi, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

ORDER

23-02-2024

01. Heard Mr. Shakir Haqani, learned counsel for the petitioner as also Mr. M.M. Dar, learned counsel for the respondent-Airport Authority of India.
02. The present review petition has been filed seeking for review of the order dated 25-03-2022 passed by this Court in A.P. No.3/2019.
03. The said application was filed seeking appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act to adjudicate the dispute which had arisen between the parties. The then Chief Justice dismissed the said application, primarily, on the two grounds.
04. Firstly, on the ground that there was a civil suit pending between the parties. Secondly, that there was no existence of an arbitration clause. Accordingly, the said application came to be dismissed.
05. Coming to the first ground on which the said application was dismissed, learned counsel for the review petitioner submits that it is not correct that there was a civil suit pending between the parties to settle the dispute.

Infact, what the review petitioner filed was an application under Section 9 of the Arbitration and Conciliation Act seeking interim relief which was wrongly construed as a civil suit.

06. Secondly, as regards the second ground on which the application was dismissed that there was no arbitration clause, it has been submitted that existence of the agreement has not been denied by the respondents. However, the respondents denied that the agreement was not given effect to, thus not executed. However, that is a question of fact which will be required to be considered by the adjudicating forum, as to whether the said agreement was given effect or not, which cannot be examined by this Court.

07. Mr. M.M. Dar, learned counsel for the respondents submits that he has filed the objections to this application taking the aforesaid pleas.

08. Heard learned counsel for the parties and perused the material on record.

09. As regards the submission made by the learned counsel for the review petitioner that there was no civil suit pending between the parties, since the respondents have also not been able to show the pendency or existence of any civil suit pending between the parties to settle the dispute except for the application filed under Section 9 of the Arbitration and Conciliation Act, this Court is of the view that it cannot be said that the review petitioner had invoked the normal civil remedy as available under law and which would disentitle him to invoke the arbitration forum.

10. As regards the second ground on which this Court had rejected the application that there was no arbitration clause, in view of the fact that the existence of the agreement has not been disputed though

implementation has been, this is a question which cannot be looked into by this Court at this stage as it would require appreciation of evidence which does not come within the scope of Section 11 of the Arbitration and Conciliation Act.

11. Under the circumstances, this Court is satisfied that this order requires to be reviewed and accordingly, same is reviewed.

12. Accordingly, the matter is remitted for re-consideration as regards the appointment of an arbitrator.

13. Review Petition No.32/2022 is allowed and **closed** and the judgement/order dated 25-03-2022 passed in AP No.3/2019 is set aside and the AP No.3/2019 is directed to be listed for fresh reconsideration on 14th March, 2024.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
23-02-2024
Shameem H.