

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

Reserved on : 05.03.2025

Pronounced on : 20.05.2025

AA No. 19/2021

**1. Union of India
Through Chief Engineer,
Udhampur Zone, J&K.**

**2. Garrison Engineer (I) 873 EWS
PIN – 913873
C/O 56 APO.**

.....Appellant(s)/Petitioner(s)

Through: Mr. Vishal Sharma, DSGI

Vs

**M/S Mohinder Brother
Engineers, Builders & Contractors
'A,' Friends Colony, Sunder Nagar
Pathankot – 145 001
Through Partner Sh. Mohinder Saini
S/o Sh. Buta Ram R/o 'A,' Friends Colony.
Sunder Nagar Pathankot – 145 001.**

.....Respondent(s)

Through: Mr. Anil Mahajan, Advocate

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
(THROUGH VIRTUAL MODE FROM SRINAGAR WING)
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGEMENT

Per: Rahul Bharti-J

01. For the contract work of "Provision of OTM for Headquarter Mountain Brigade including Signal Company Provost and Helipad" at Bhaderwah, a contract No. CEUZ-20/2003-04 came to be executed between the petitioner No. 1

through the Chief Engineer, Udhampur Zone, J&K and the respondent concern.

02. The contract work value was of Rs.14,60,37,461.23.

03. The commencement of the contract work was with effect from **10.09.2003** and was scheduled to be completed by **09.06.2004** and **09.09.2005** in two phases, but actually came to be rescinded from the respondent's end on **27.07.2011** and whereas the contract came to be cancelled from the appellants' end on **15.12.2012**.

04. The disputes/differences having arisen in relation to and out of the said contract work execution and termination led to the appointment of an arbitrator in terms of an order dated **12.09.2017** passed in arbitration case AA No. 22 of 2017 with appointment of Mr. Neeraj Parashar, Brigadier, Chief Engineer as a sole arbitrator.

05. In the arbitration proceedings, the respondent came forward with the following claims:-

CLAIM No. 1 of Rs. 2,04,60,865.00 REVISED TO Rs. 2,06,59,826.94 FOR PAYMENT FOR BALANCE AMOUNT OF WORK DONE AND MATERIALS AT SITE.

Claim No. 2 of Rs. 48,87,500.00 FOR RELEASE OF FIXED DEPOSIT RECEIPTS OF Rs. 33,87,500.00 AND RELEASE OF BANK GUARANTEE OF Rs. 15,00,000.00.

CLAIM No. 3 of Rs. 2,60,000.00 FOR PAYMENT FOR CEMENT STORE, SITE OFFICE, WATER TANK. MIXING PLATFORMS TAKEN OVER BY DEPTT.

CLAIM No.4 of Rs.5,06,03,395.00 FOR REIMBURSEMENT

OF LOSS CAUSED BY DEPTT, DUE TO DELAYS AND REFUSAL TO MAKE PAYMENTS.

CLAIM No. 5 of Rs.14,97,136.94 FOR REFUND OF RECOVERY WRONGLY MADE FOR STONE FOR R.R.MASONARY (AMMENDED TO Rs. 14,75,565.00).

CLAIM No.6 of Rs.52,21,364.53 FOR PAYMENT FOR PROVISION OF R.C.C. BEAM IN LIEU OF SIESMIC BAND.

CLAIM No. 7 of Rs.2,41,149.00 FOR REFUND OF RECOVERY FOR USE OF TMT BARS IN LIEU OF CTD BARS IN REINFORCEMENT.

CLAIM No. 8 of Rs.99,150.00 FOR REFUND OF UNCONTRACTUAL RECOVERY MADE FOR USE OF PORTLAND PUZZOLANA CEMENT.

CLAIM No. 9 of Rs. 7,00,000.00 FOR REIMBURSEMENT OF LOSS CAUSED DUE TO DAMAGE TO WORK DONE DUE TO HEAVY SNOWFALL.

CLAIM No. 10 of Rs. 90,000.00 FOR USE of 400 KG CEMENT IN LIEU OF 376 KG PER CUBIC METER OF M-25 CONCRETE.

CLAIM No. 11 of Rs. 36,26,303.00 FOR LOSS OF PROFIT ON BALANCE WORK.

CLAIM No. 12 of Rs. 5,86,99,275.00 FOR INCREASE IN PRICES OF MATERIALS, FUEL AND MINIMUM WAGES OF LABOUR AFTER ORIGINAL PERIOD OF CONTRACT.

CLAIM No. 13 of Rs. 3,13,857.00 FOR WRONG PRICING OF FLY PROOF STEEL WINDOW FRAME BY WEIGHT INSTEAD OF IN SQUARE METER UNDER SSR ITEM No. 1245.

CLAIM No. 14 of Rs. 61,41,814.00 FOR UNDER PRICING OF BUILDINGS UNDER SCHEDULE A SECTION I OF CONTRACT AGREEMENT.

CLAIM No.15 of Rs.7,29,91,390.00 FOR REIMBURSEMENT OF DAMAGES AND LOSS ON ACCOUNT OF BREACH OF CONTRACT BY THE DEPARTMENT INCLUDING NON-HANDING OVER OF OVER 70% OF SITES FOR MORE THAN 5 YEARS, CHANGES IN SITES, DELAY IN GIVING DECISIONS, DELAY IN SHIFTING OVERHEAD ELECTRIC LINES, DELAY IN APPROVAL OF SAMPLES, REFUSAL TO PAY RAR's ETC, RESULTING IN PROLONGATION OF CONTRACT PERIOD.

CLAIM No. 16 FOR INTEREST @ 18% P.A.

CLAIM No. 17 of Rs. 10,00,000.00 FOR COST OF REFERENCE TO ARBITRATION.

06. As against the aforesaid 17 claims of the respondent, the appellants came forward with four claims:-

CLAIM No. 1 of Rs. 824 LAKHS FOR EXTRA EXPENDITURE INCURRED TO GET THE WORK COMPLETED THROUGH OTHER AGENCY.

CLAIM No. 2 of Rs. 25 LAKHS FOR COMPENSATION FOR DELAY.

CLAIM No. 3 of Rs.1.5 LAKHS FOR COST OF ARBITRATION.

CLAIM No. 4 FOR INTEREST @ 18% P.A.

07. The aggregated amount of the respondent's seventeen (17) claims was Rs. 22,70,10,590.00 and whereas that of the appellants was Rs. 8,49,00,000.00.

08. Vide an award dated **31.05.2018**, the arbitral dispute came to be adjudicated upon.

09. The arbitral tribunal came forward with award of claims in favour of the respondent and the appellants in the following manner:-

Claims of Claimant:

Claim No.	Details	Amount of Claim in Rs.	Amount Awarded in Rs.
1.	Payment for balance amount of work done and materials at site.	2,06,59,827.00	40,48,170.00
2.	For release of FD and BGB.	48,87,500.00	48,87,500.00
3.	For payment for	2,60,000.00	1,50,000.00

	cement store, site office, water tank, mixing platforms taken over by deptt.		
4.	Reimbursement of loss caused by Deptt. due to delays and refusal to make payments.	5,06,03,395.00	26,08,902.00
5.	Refund of recovery wrongly made for stone for RR Masonary	14,75,565.00	14,75,565.00
6.	Payment for provision of RCC, beam in lieu of Seismic band.	52,21,364.53	52,21,364.00
7.	Refund of recovery for use of TMT bars in lieu of CTD bars in reinforcement.	2,41,149.00	2,41,149.00
8.	Refund of un-contractual recovery made for use of Portland Puzzolana cement.	99,150.00	Nil
9.	Reimbursement of loss caused due to damage to work done due to heavy snowfall.	7,00,000.00	Nil
10.	Use of 400 kg cement in lieu of 376 kg per cubic meter of m-25 concrete	90,000.00	Nil
11.	Loss of profit on balance work.	36,26,303.00	Nil
12.	Increase in prices of materials, fuel, and minimum wages of labour after original period of contract.	5,86,99,275.00	Nil
13.	Wrong pricing of fly proof steel window frame by weight instead of in sq m SSR item No. 1245	3,13,857.00	3,13,857.00
14.	Under pricing of buildings	61,41,814.00	Nil
15.	Reimbursement of damages and loss on account of breach of contract by the deptt. resulting in prolongation of contract period.	7,29,91,390.00	Nil
16.	Interest @ 18% P.A.	@18%	@6%
17.	Cost of reference to	10,00,000.00	Nil

	Arbitration		
	TOTAL	22,70,10,590.00	1,89,46,507.00

Claims of Respondent UOI:

Claim No.	Details	Amount of Claim in Rs.	Amount Awarded in Rs.
1.	Extra expenditure incurred to get the work completed through other agency.	8,24,00,000	Nil
2.	Compensation for delay	25,00,000	Nil
3.	Cost of Arbitration	1,50,000	Nil
4.	Interest @ 18% p.a.	@18%	Nil

All the claims of the appellants resulted in being held nil.

10. Thus, the respondent came to be awarded an amount of **Rs. 1,89,46,507.00** with recurring interest as granted.

11. The appellants came to lay a petition under section 34 of J&K Arbitration & Conciliation Act, 1997 (in short to be referred as **“J&K A&C Act, 1997”**) thereby challenging said arbitral award dated **31.05.2018**, filed before the High Court of Jammu & Kashmir as it used to be then on file AP No. 22/2018 on **01.09.2018**.

12. With respect to the petition AP No. 22/2018 so filed under section 34 of the J&K A&C Act, 1997 the appellants, acting at their own call, came forward with an intervening application for seeking permission to withdraw said pending section 34 petition AP No. 22/2018 bearing a self-drawn assumption that because of preliminary objection being raised

by the respondent in its reply to the appellants' said section 34 petition AP No. 22/2018 objecting that as a petition under section 9 of the J&K A&C Act, 1997 was filed in the matter first before the Principal District Judge, Udhampur, so the appellants' petition AP No. 22/2018 filed under section 34 of J&K A&C Act, 1997 was to be maintainable, instead of this Court, only before the court of Principal District Judge, Udhampur which had so dealt with section 9 petition involving the parties to the contract in terms of an order dated **15.04.2013**.

13. In the application seeking withdrawal of said section 34 petition AP No. 22/2018, the appellants came to aver that finding its said petition locked in a preliminary objection with respect to its maintainability it would not be making much difference if section 34 petition is decided either by the Principal District Judge, Udhampur or by the High Court of Jammu & Kashmir and, therefore, in order to save the time of the High Court in arguing the points as mentioned in their said section 34 petition, the withdrawal of said section 34 petition is being solicited.

14. It is, thus, clear that in their application for seeking withdrawal of section 34 petition AP No.22/2018, the

appellants self invited an awkward situation to land themselves in and later to suffer adverse outcome.

15. By virtue of an order dated **10.05.2019**, the appellants were allowed withdrawal of their said pending section 34 petition AP No.22/2018 from this court with a liberty to file afresh before the Principal District Judge, Udhampur.

16. It is pertinent to mention here that the liberty sought was to file a fresh petition under section 34 of the J&K A&C Act, 1997 to challenge the arbitral award dated **31.05.2018** before the court of Principal District Judge, Udhampur and not for transferring of so pending section 34 petition AP No. 22/2018 to the court of Principal District Judge, Udhampur for adjudication.

17. Acting at their own leisure and unmindful of the fact that time was running against them, the appellants came to prefer fresh section 34 petition before the Principal District Judge, Udhampur on its file No.77/Arbitration instituted on **24.07.2019** i.e. after **74** days w.e.f. withdrawal order dated **10.05.2019**.

18. In the said fresh section 34 petition, the respondent, upon its appearance, came to object to the very entertainment of said petition so filed by the appellants for the purpose of

questioning the arbitral award, by raising and agitating the plea of the appellants' fresh section 34 petition being time barred in terms of its institution and no scope for any extension of time available at the disposal of the appellants under the scheme of J&K A&C Act, 1997.

19. The petitioners' said fresh petition under section 34 of the J&K A&C Act, 1997 so filed before the court of Principal District Judge, Udhampur failed to cross the hurdle of limitation so put up by the respondent which came to weigh with the court of Principal District Judge, Udhampur. Vide its order dated **14.09.2021**, the Principal District Judge, Udhampur came to hold that even if the benefit of section 14 of the J&K Limitation Act, Svt. 1995 (1938 AD) (akin to section 14 of Central Limitation Act, 1963) were to be extended in favour of the appellants with respect to filing of their fresh petition under section 34 of the J&K A&C Act, 1997 by discounting the time spent in the pendency of the first section 34 petition AA No.22/2018 filed before and withdrawn from the High Court of Jammu & Kashmir and Ladakh but still by the time the appellants came to approach the court of Principal District Judge, Udhampur, they had lost precious time rendering their section 34 petition simply time barred.

20. The court of Principal District Judge, Udhampur reckoned the period of limitation of three (3) months for filing a petition under section 34 of J&K A&C Act, 1997 by referring itself to the text of section 34(3) of J&K A&C Act, 1997 which is reproduced as under:-

“34. Application for setting aside arbitral award.—

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity ; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon under the law for the time being in force ; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceeding or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside ; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from

which the parties cannot derogate, or, failing such agreement was not in accordance with this Part ; or

(b) the Court finds that–

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force ; or

(ii) the arbitral award is in conflict with the public policy of the State.

Explanation:–Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared for the avoidance of any doubt, that an award is in conflict with the public policy of the State if the making of the award was induced or affected by fraud or corruption or was in violation of section 58 or section 64.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal :

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

21. Consequently, the appellants lost their challenge intended to be posed to the arbitral award in reference through the medium of their section 34 fresh petition.

22. Aggrieved of said outcome, the petitioners came to prefer the present appeal under section 37 of the J&K A&C Act, 1997 assailing the order, *inter-alia*, on the grounds that the order suffers from patent illegality besides being contrary to law and facts which is one of the admissible grounds on which an outcome of challenge under section 34 of Arbitration & Conciliation Act, 1996 is amenable to challenge in an appeal under section 37 of the Arbitration & Conciliation Act, 1996.

23. The appellants urge the grounds taken in the memo of appeal that the learned Principal District Judge, Udhampur failed to notice that limitation for filing a petition under section 34 J&K A&C Act, 1997 was six (6) months as on the date of filing of section 34 fresh petition before the court of Principal District Judge, Udhampur, as the originally prescribed three (3) months period stood extended by six (6) months in terms of J&K Arbitration & Conciliation (Amendment) Act, 2018 and, therefore six months' period was still standing in credit of the appellants at the time of filing of fresh section 34 petition before the court of Principal District Judge, Udhampur by being admitted to the benefit of section 14 of the J&K Limitation Act, Svt. 1995 (1938 AD).

24. In addition, it is further pleaded in the grounds of challenge that the loss of time suffered in the pendency of first

section 34 petition AP No. 22/2018 before the High Court of Jammu & Kashmir and Ladakh ought to have been accommodated in favour of the appellants in order to salvage their petition under section 34 of the J&K A&C Act, 1997 so filed before the court of Principal District Judge, Udhampur.

25. Mr. Vishal Sharma, learned DSGI from his end has made vehement efforts to plead that on a technical issue the appellants have been rendered non-suited in their cause of first challenge under section 34 of J&K A&C Act, 1997.

26. Mr. Anil Mahajan, learned counsel for the respondent very vehemently defends the impugned order dated **14.09.2021** passed by the Principal District Judge, Udhampur in terms whereof section 34 petition filed by the appellants to impugn the award dated **31.05.2018** came to be held time barred not entitled for any time relaxation. Mr. Anil Mahajan, learned counsel submits that the learned Principal District Judge, Udhampur has called the bluff of the appellants by exposing them that in filing a fresh section 34 petition after expiry of two and half months with effect from **10.05.2019** of withdrawal of first section 34 petition AP No. 22/2018 itself ruled out any scope for accommodation getting in favour of the appellants in entertaining their said section 34 petition so filed before Principal District Judge, Udhampur. It

is submitted that the impugned order needs no interference at the asking of the appellants who have been found to be indolent by the learned Principal District Judge, Udhampur.

27. Before we proceed further, for the sake of convenience we recapitulate some essential dates bearing which in mind our adjudication has to proceed further in the matter:-

- Date of arbitral award is **31.05.2018**;
- Filing of petition AP No.22/2018 under section 34 of the J&K A&C Act, 1997 by the appellants before this Court is **01.09.2018**;
- Withdrawal of said section 34 petition AP No. 22/2018 on **10.05.2019**;
- Filing of fresh section 34 petition before the Principal District Judge, Udhampur on **24.07.2019**.
- Dismissal of fresh section 34 petition by the Principal District Judge, Udhampur on **14.09.2021**.

28. When we go through the memo of appeal, we are left to wonder that how the appellants can be heard to say that the running of time in the matter of filing of section 34 petition under J&K A&C Act, 1997, or for that matter now under Arbitration & Conciliation Act, 1996, in terms of the period of limitation prescribed could come to suffer pause extending the appellants a leisure of taking their own time and going afresh

to the court of Principal District Judge, Udhampur with a petition under section 34 of the J&K A&C Act, 1997.

29. The arbitral award, which was intended to be impugned by the appellants under section 34 of the J&K A&C Act, 1997, is dated **31.05.2018**. Time had started running against the appellants in terms of filing of a challenge petition under section 34 of J&K A&C Act, 1997 with effect from **31.05.2018**.

30. The appellants in their said section 34 petition AP No. 22/2018 filed before this Court did not make any averment therein that from which date onward time for filing of said section 34 petition for challenging the award had set running in their favour whereas, on the other hand, the Examination Report in the case made by the Examiner of this Court had spelled out that from the date of passing of the award i.e. **31.05.2018** to the filing of the petition AP No. 22/2018 on **01.09.2018**, the intervening days counted to be 92 days, as against 90 days (three months period) for maintaining a petition under section 34 but giving the benefit of two copying days, first section 34 petition AP No. 22/2018 was held to be within time by point of view of limitation period under section 34(3) of J&K A&C Act, 1997 then being three (3) months.

31. The appellants, in their fresh petition under section 34 of the J&K A&C Act, 1997 before the Principal District Judge, Udhampur, did not spell out as to from which date the time was counting its running in terms of section 9 of the J&K Limitation Act, Svt. 1995 (1938 AD) with respect to filing of section 34 petition before the court of Principal District Judge, Udhampur.

32. Instead, the appellants in their said fresh section 34 petition meant to say that since they had filed their first petition AP No. 22/2018 under section 34 of J&K A&C Act, 1997 before the High Court of J&K, as it used to be then, within limitation period of six (6) months, as such, they had, at their disposal pending installment of three months from the date of passing of order dated **10.05.2019** of this Court allowing them withdrawal of first section 34 petition, so as to make their fresh petition under section 34 before the court of Principal District Judge, Udhampur filed on **24.07.2019** within six months' period of limitation.

33. For the sake of reference, we reproduce hereunder section 9 of the Limitation Act, 1963, which is *pari materia* with section 9 of the J&K Limitation Act, Svt. 1995 (1938 AD):-

“9. Continuous running of time:-

Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stop it:

Provided that, where letters of administration to the estate or a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.”

34. Section 9 of the J&K Limitation Act, Svt. 1995 (1938 AD) was not meant to afford any such switch on and switch off mode and manner of run of limitation period prescribed.

35. The learned Principal District Judge, Udhampur applied the reasoning that once the period of limitation against the appellants in terms of filing of a challenge petition under section 34 of J&K A&C Act, 1997 had set to run from the date of arbitral award itself, the limitation period of three (3) months for the appellants to file fresh section 34 petition, otherwise actually filed on **24.07.2019**, was much beyond the prescribed period of limitation even if the period spent lasting the pendency of first section 34 petition AP No. 22/2018 before this Court was to be taken out from the running of time. Mandate of section 9 of the Limitation Act, 1963 being unsparing meant no stopping of limitation period once it started running in relation to the appellants' fresh section 34 petition.

36. When the first section 34 petition AP No. 22/2018 of J&K A&C Act, 1997 was filed, it was already filed on the last day of three (3) months then prescribed limitation period and so the appellants were supposed not to loose a single day in coming up with fresh section 34 petition which should have been filed on **11.05.2019** very next day of passing of order dated **10.05.2019** allowing withdrawal of first petition AP No. 22/2018 with liberty to file fresh but not **24.07.2019**.

37. The appellants before the court below were meaning to beseech that the period of limitation available at their end for their fresh section 34 petition is six (6) months by which reckoning there was at their disposal period of remainder three (3) months with effect from **10.05.2019**, being the date of withdrawal of their first section 34 petition AP No. 22/2018, in terms of J&K Arbitration & Conciliation (Amendment) Act, 2018 which came to provide for revised period of six (6) months for filing a petition under section 34 of the J&K A&C Act, 1997.

38. Mr. Vishal Sharma, learned DSGI arguing for the appellants submits that the appellants' first section 34 petition AP No. 22/2018 before this Court was filed on the last day of limitation period of three (3) months period ending on **01.09.2018** and remained pending for a period upto

10.05.2019 when it came to be withdrawn with liberty to file fresh section 34 petition which came to be filed on **24.07.2019**.

39. Mr. Vishal Sharma, learned DSGI submits that if the period of pendency of first section 34 petition AP No. 22/2018 before this Court from **01.09.2018** to **10.05.2019** is given discount by operation of section 14 of the Limitation Act, 1963, then six (6) months' limitation period available under the J&K Arbitration & Conciliation (Amendment) Act, 2018 was still in running & available and, therefore, the learned Principal District Judge, Udhampur ought to have made a correct understanding of the J&K Arbitration & Conciliation (Amendment) Act, 2018 and computation of time in terms of prescribed period of limitation being six (6) months.

40. This plea of Mr. Vishal Sharma, learned DSGI arguing for the appellants requires a very close scrutiny and that is from two aspects.

41. First aspect is, as pleaded by Mr. Vishal Sharma, learned DSGI that under the J&K Arbitration & Conciliation (Amendment) Act, 2018 period of limitation for section 34 petition came to be revised to six (6) months and by that reckoning the appellants' fresh section 34 petition before the Principal District Judge, Udhampur was within time. Second

aspect is whether section 14 of the Limitation Act, 1963 was available in service of the appellants.

42. In terms of section 7 of J&K Arbitration & Conciliation (Amendment) Act, 2018, section 34 of the J&K A&C Act, 1997 came to be amended in which connection the limitation period of three (3) months provided in section 34(3) came to be substituted by six (6) months.

43. Thus, by force of amendment of section 34 of J&K A&C Act, 1997, as made by Amendment Act of 2018, the period of limitation for filing a petition under section 34 of J&K A&C Act, 1997 stood revised from three (3) months to six (6) months and, therefore, at the point of time when the amendment of section 34(3) had come to take place in 2018, the petitioner's first section 34 petition AP No. 22/2018 was already pending disposal before this Court rendering the appellants entitled to have to their credit three (3) months more period in terms of filing of section 34 petition.

44. This Governor's Act No. XVIII of 2018 meant that for any section 34 petition under the J&K A&C Act, 1997, the limitation period of three (3) months originally provided if were to expire upon the commencement or during currency of the J&K Arbitration & Conciliation (Amendment) Act, 2018 or in case original period of three (3) months limitation had already

expired just before the commencement of the Amendment Act of 2018, then with a credit of three (3) months more period, a section 34 petition would come to be filed within available extended period of three (3) months or less than that reckoning from the expiry of three (3) months' limitation period, then such a section 34 petition filed would be counted as filed within time.

45. To put in simple perspective, the original three (3) months period pre-amendment stage, for the appellants to file their first section 34 petition was expiring on **01.09.2018** whereas the Amendment Act of 2018 came into force in October, 2018 and that meant three (3) months period got added on to be at the disposal of the appellants in case if the appellants would have not even filed their first section 34 petition or upon withdrawal of their first section 34 petition from this Court to be followed by a filing of fresh section 34 petition before Principal District Judge, Udhampur within next three (3) months.

46. Now, since the appellants first section 34 petition AP No. 22/2018 filed within limitation period of three months came to be withdrawn on **10.05.2019** by which time additional three (3) months limitation period had come to expire, and by the time fresh section 34 petition came to be

filed by the appellants on **24.07.2019** additional loss of time had taken place, so the appellants' filing of fresh petition on **24.07.2019** *ex-facie* was beyond six (6) months period.

47. It is at this situation that Mr. Vishal Sharma, learned DSGI arguing for the appellants submits that additional three (3) months of extended period of limitation for filing section 34 petition envisaged under Amendment Act of 2018 was to be reckoned available at the disposal of the appellants with effect from **10.05.2019** when their first section 34 petition AP No. 22/2018 was withdrawn with liberty earned from this Court.

48. On the face of it, the plea of Mr. Vishal Sharma, learned DSGI is very much tempting to be accepted readily but the plea needs to be closely examined by us whether the appellants were entitled to benefit of section 14(2) of the Limitation Act, 1963. Section 14 of the Limitation Act, 1963 reads as under:-

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, **from defect of jurisdiction or other cause of a like nature, is unable to entertain it.**

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation — For the purposes of this section,—

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

49. For accepting plea that the appellants can be heard to plead that the mandate of section 14(2) of the Limitation Act, 1963 was available at their disposal, then this Court is to examine and hold first that the institution of first section 34 petition AP No. 22/2018 before this Court and its pendency lasting upto **10.05.2019** was a matter of proceeding maintained by the appellants in a good faith notwithstanding

the defect of jurisdiction or other cause of a like nature attending thereto.

50. There is no doubt that the appellants in terms of their first section 34 petition AP No. 22/2018 were pursuing their said petition before this Court in a bona fide manner notwithstanding the objection raised by the respondent in its reply that said section 34 petition AP No. 22/2018 was not maintainable before this Court on account of lack of jurisdiction because of the reason that a section 9 petition under J&K Arbitration & Conciliation Act had first been filed before the Principal District Judge, Udhampur disposed of vide an order dated 15.04.2013 and, therefore, rest of the proceedings related to arbitration between the parties were meant to be instituted before the same very court of Principal District Judge, Udhampur to the exclusion of any other court including the High Court.

51. The tone and tenor of the application filed by the appellants seeking withdrawal of section 34 petition AP No. 22/2018 would show that the appellants did not mean to say that the High Court was lacking jurisdiction in entertaining and agitating their said section 34 petition AP No. 22/2018 but given the option available of approaching the Principal District Judge, Udhampur also having the jurisdiction to deal with the

matter, so in order to save the time of this Court in arguing on the point of objection with respect to the maintainability of the petition it was better in terms of prudence for the appellants to approach the court of Principal District Judge, Udhampur with section 34 petition.

52. The import of this plea is an exhibit of the bona fide on the part of the appellants that they were pursuing their section 34 petition AP No. 22/2018 with due concern and indulgence.

53. Next point to be considered in the matter of applying the benefit of section 14(2) of the Limitation Act, 1963 is to see as to whether this Court was suffering any defect of jurisdiction in dealing with section 34 petition AP No. 22/2018 of the appellants.

54. In this regard, Mr. Vishal Sharma, learned DSGI arguing for the appellants refers to the fact that in order dated 13.11.2018 of section 34 petition AP No. 22/2018 a reference came to be made to a case of “Ramesh Chand Kathuria Vs M/s Trikuta Chemicals Pvt. Ltd.,” 2016 SLJ 1 being a Full Bench judgment of the High Court of Jammu & Kashmir as it was then, wherein it came be held that in the event of a section 9 petition under the J&K A&C Act, 1997 if having been filed and decided first before a District Court, then a follow up section

34 petition and/or proceedings of other nature, is to be maintained before the said very court and not to the High Court even though competent to adjudicate section 34 petition.

55. By reference to this aspect, Mr. Vishal Sharma, learned DSGI argues that even though there was no defect of jurisdiction, *per se*, with respect to the High Court of Jammu & Kashmir in terms of section 14(2) of the Limitation Act, 1963 in dealing with section 34 petition AP No. 22/2018 but there was a cause of like nature as envisaged under section 14(2) of Limitation Act, 1963 so as to afford to the appellants a plea that they were entitled to credit of period of pendency of their section 34 petition AP No. 22/2018 before the High Court of Jammu & Kashmir as it was then and that required to be excluded in reckoning continuing running of time in terms of section 9 of the Limitation Act, 1963 which clearly meant that on **24.07.2019** when the fresh section 34 petition came to be filed by the appellants before Principal District Judge, Udhampur six (6) months' revised period limitation under section 34(3) of J&K A&C Act, 1997 was still available so as to make their fresh petition under section 34 filed within the time.

56. The argument of Mr. Vishal Sharma, learned DSGI is very sound and there is no scope for us to find any gap in it

particularly by bearing in mind the fact that the law of limitation being a procedural law and bears the nature of being retrospective in effect.

57. In this regard, paras 19 & 20 in the case of **“Thirumalai Chemicals Limited Vs Union of India and others,” 2011 AIR SC 1725** are reproduced hereunder:-

“19. Law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exist under substantive law. **On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute.** Statutes of limitation **are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier, but they are prospective in the sense that neither have the effect of reviving the right of action which is already barred on the date of their coming into operation,** nor do they have effect of **extinguishing a right of action subsisting on that date.** Bennion on Statutory Interpretation 5th Edn.(2008) Page 321 while dealing with retrospective operation of procedural provisions has stated that provisions laying down limitation periods fall into a special category and opined that although prima facie procedural, they are capable of effectively depriving persons of accrued rights and therefore they need be approached with caution.

20. Learned author in order to establish the above proposition referred to the decision of the Court of Appeal in The Ydun case [THE YDUN (1899) Probate Division at page 236 (The Court of Appeal) where the Court held that the amending

legislation dealt with procedure only and therefore applied to all actions whether commenced before or after the passing of the Act and even in respect of previously accrued rights. The principle laid down in 'The Ydun' was applied in *The King v. Chandra Dharma* (1905) 2 KB 335 and it was held that if a statute shortening the time within which proceedings can be taken is retrospective then it is impossible to give good reason, why a statute extending the time within which proceedings be taken, should not be held to be retrospective. The Judicial Committee of Privy Council in *Yew Bon Tew v. Kenderaan Bas Mara* (1982) 3 All E.R. 833, opined that whether statute has retrospective effect, cannot in all cases safely be applied by classifying statute as procedural or substantive and pointed out in certain situation the Court would rule against a retrospective operation. Limitation provisions therefore can be procedural in the context of one set of facts but substantive in the context of different set of facts because rights can accrue to both the parties. In such a situation, test is to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations. An accrued right to plead a time bar, which is acquired after the lapse of the statutory period, is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute. Therefore, unless the language clearly manifests in express terms or by necessary implication, a contrary intention a statute divesting vested rights is to be construed as prospective. A statute, merely procedural is to be construed as retrospective and a statute while procedural in nature affects vested rights adversely is to be construed as prospective. The manner of filing an appeal, under sub section (2) of Section 19 of FEMA and the time within which such an appeal has to be preferred and the power conferred on the Tribunal to condone delay under the proviso to sub-section (2) of Section 19 are matters of procedure and act retrospectively, so as to cover causes of action which arose under FERA. Since the appeal was filed under FEMA with an

application for condonation of delay such an appeal has to be considered by the Tribunal under the proviso to sub-section(2) of Section 19 FEMA and if the Company shows sufficient cause for not filing the appeal in time then the Tribunal can condone the delay and entertain the appeal, especially when there is no accrued right to the respondent to plead a time bar. The legal position is summarized thus by Justice G.P. Singh in Principles of Statutory Interpretation (12th Edition-Page 541) thus:-

“Statutes of Limitation are thus retrospective in so far as they apply to all legal proceedings brought after their operations for enforcing causes of action accrued earlier....”

58. In **“Roshanlal Kuthalia Vs. R. B. Mohan Singh Oberoi,” 1975 AIR(SC) 824** section 14 of Limitation Act, 1963 has been appreciated in the following manner:

“27. Certainly, Sec. 14 is wide enough to cover periods covered by execution proceedings (See 1959 SCR 811 : 1958 Legal Eagle (SC) 71 at 818 = (AIR 1958 SC 827 : 1958 Legal Eagle (SC) 71 at p. 831). After all Section 47 itself contemplates transmigration of souls as it were of execution petitions and suits. The substantial identity of the subject matter of the lis is a pragmatic test. Moreover, the defects that will attract the provision are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right (See (1971) 2 SCR 397 : 1970 Legal Eagle (SC) 376 at 401 -(AIR 1971 SC 2313 : 1970 Legal Eagle (SC) 376 at p 2316). In the Associated Hotels case (i e. the very lis in its earlier round on the execution side) this Court pointed out ((1961) 1 SCR 259 at 272 = (AIR 1961 SC 156 : 1960 Legal Eagle (SC) 177 at p. 163)) that the question was

one of initial jurisdiction of the Court to entertain the proceedings. Thus in this very matter, the obstacle was jurisdictional and the exclusionary operation of Section 14 of the Limitation Act was attracted.”

59. By reference to the aforesaid citation, when we see that the appellants’ first section 34 petition AP No. 22/2018 was filed within time by reckoning to the then period of limitation being three (3) months prescribed under section 34 of J&K A&C Act, 1997 before amendment of 2018 and then later the period of three (3) months getting revised to six (6) months under the Amendment Act of 2018, the appellants’ right of action under section 34 was very much initiated one and has not become barred and, therefore, fully entitled them to retrospect benefit of enlargement of period of limitation of six (6) months.

60. Viewed thus, we hold that the learned Principal District Judge, Udhampur erred in making correct appreciation of facts and law of the case rendering the impugned order 14.09.2021 seriously flawed and deserving to be set aside, which is, accordingly, set aside. We hold the appellants’ section 34 petition filed before the Principal District Judge, Udhampur to be filed within a period of limitation by reference to six (6) months period of limitation under the Amendment Act of 2018. We, therefore, direct the Principal District Judge,

Udhampur to restore the section 34 petition of the appellants for adjudication and dispose of the same on merits.

61. ***Disposed of.***

(Rahul Bharti)
Judge

(Rajnish Oswal)
Judge

Jammu
20.05.2025
Muneesh

Whether the judgment is speaking : **Yes**

Whether the judgment is reportable : **Yes**

