

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

Arb APP 2/2025

**M/S Abdul Salam Mir Constructions ...Petitioner/Appellant(s)
Company Private Limited**

Through: Mr. Showkat Ali Khan, Advocate

Vs.

Chief Engineer and Anr.

...Respondent(s)

Through: None

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE (Through V.C)**

ORDER

06.06.2024

1. This appeal filed by the appellant in terms of Section 37 of the Arbitration and Conciliation Act, 1996 [“the Act of 1996”] arises out of an order dated 02.04.2025 passed by the learned Single Judge of this Court in Arbitration Petition no. 03/2025 titled “*Chief Engineer, PW (R&B) Department and another v. Abdul Salam Mir*”, whereby the learned Single Judge has rejected the preliminary objection of the appellant herein with regard to the maintainability of the petition filed by the respondents under Section 34 of the Act of 1996 on the ground of limitation.

2. At the outset, Mr. Showkat Ali Khan, learned counsel for the appellant, was confronted with the provisions of Section 37 of the Act of 1996 which do not provide an appeal against an order passed by the court holding a petition under Section 34 of the Act of 1996 within time. Mr. Showkat would rely upon the judgment of the Hon’ble Supreme Court in *Chintels India Ltd. v. Bhayana Builders Pvt. Ltd., 2021 0 Supreme (SC) 71* and submit that rejection of objection taken by the appellant to the maintainability of petition under Section 34 on the ground of limitation is tantamount to setting aside or refusing to set aside the arbitral award under Section 34 of the Act and, therefore, appealable under Section 37 (1)(c) of the Act.

3. Having heard learned counsel for the appellant and perused the material on record, we need to first set out Section 37 which provides for appeals from the certain orders:-

“37. Appealable orders.

[\(1\)](#) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely:---

[\(a\)](#) [refusing to refer the parties to arbitration under section 8;
[\(b\)](#) granting or refusing to grant any measure under section 9;
[\(c\)](#) setting aside or refusing to set aside an arbitral award under section 34.]

[\(2\)](#) An appeal shall also lie to a Court from an order of the arbitral tribunal--

[\(a\)](#) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

[\(b\)](#) granting or refusing to grant an interim measure under section 17.

[\(3\)](#) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

4. From plain reading of Section 37 it is evident that an appeal shall lie only from the following orders and from no others:-

“[\(a\)](#) refusing to refer the parties to arbitration under section 8;
[\(b\)](#) granting or refusing to grant any measure under section 9;
[\(c\)](#) setting aside or refusing to set aside an arbitral award under section 34.”

5. The appeal is also provided against an order granting or refusing to grant an interim measure under Section 17 and also against accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16 of the Act.

6. From bare perusal of Section 37, it is evident that the order impugned before us passed by the learned Single Judge holding an application under Section 34 within time and rejecting the objection of the appellant to the maintainability of application on the ground of limitation does not qualify to be an ‘appealable order’ as enumerated under Section 37 of the Act of 1996 reproduced above. The rejection of objection to the maintainability of an application under Section 34 on the ground of limitation cannot, by any stretch of reasoning, be construed to be an order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The judgment relied upon by the learned counsel for the appellant does not support the contention of the learned counsel

for the appellant in any manner. What is held by the Supreme Court in the aforesaid judgment is that where the court dismisses an application under Section 34 on the ground of limitation, said order shall be taken to be an order refusing to set aside an award and, thus, appealable under Section 37 of the Act. The reverse is the position in the instant case.

7. For the foregoing reasons, we are of the considered opinion that the impugned order passed by the learned Single Judge holding an application under Section 34 of Act of 1996 within time is not appealable under Section 37 of the Act of 1996 and, therefore, this appeal is not maintainable.

8. The appeal is, thus, dismissed in limini.

(SINDHU SHARMA)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
06.06.2025
"YASMEEN, Secy."

Whether the order is reportable: yes/no

