



2025:UHC:1545-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

JUSTICE SHRI MANOJ KUMAR TIWARI
AND
JUSTICE SHRI VIVEK BHARTI SHARMA

Appeal From Order No. 35 of 2025

06 March, 2025

Hoshiyar Singh Negi

--Appellant

Versus

Garhwal Mandal Vikas Nigam Limited & others

--Respondents

Presence:-

1. Mr. Neeraj Garg, learned counsel for the appellant.
 2. Ms. Abhilasha Tomar, learned counsel holding brief of Mr. Sandeep Kothari, learned counsel for the respondent no. 1.
 3. Ms. Mamta Bisht, learned Deputy Advocate General for the State.
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JUDGMENT:(per Shri Manoj Kumar Tiwari, J.)

This is an appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 challenging the order dated 23.12.2024 passed by learned Additional District Judge (*Commercial Court*), Dehradun in Arbitration Case No. 90 of 2023.

2. By the impugned order, application for interim relief, filed by the appellant under Section 9(1) of the Arbitration and Conciliation Act, 1996 (*for short "the Act"*)



was rejected on the ground that appellant has not shown willingness or eagerness for approaching Arbitral Tribunal for resolution of the dispute, in his application, filed under Section 9 of the Act.

3. Learned Commercial Court relied upon a judgment rendered by Hon'ble Supreme Court in the case of **"Firm Ashok Traders & Another vs. Gurumukh Das Saluja & others"** reported as **(2004) 3 SCC 155**, for non-suiting the appellant for interim relief.

4. Appellant has challenged rejection of his interim relief application on the ground that learned Commercial Court completely misread the judgment rendered by Hon'ble Supreme Court in the case of "Firm Ashok Traders" (supra). It is contended that the said judgment nowhere provides that interim relief has to be denied under Section 9 for non-indication of applicant's intent to approach the Arbitral Tribunal or for his not disclosing the timeline for approaching the Arbitral Tribunal.

5. Learned counsel for the appellant refers to para 18 of the aforesaid judgment in support of his contention, relevant extract whereof is reproduced below:-

"18. The court, approached by a party with an application under Section 9, is justified in asking the party and being told how and when the party approaching the court proposes to commence the arbitral proceedings. Rather, the scheme in which Section 9 is placed obligates the court to do so. The court may also while passing an order under Section



9 put the party on terms and may recall the order if the party commits breach of the terms.”

6. Learned counsel for the appellant submits that Hon’ble Supreme Court in the above extracted portion of the judgment in the case of “Firm Ashok Traders” (supra) has held that even where the party approaching a court for interim relief under Section 9 of the Act has not disclosed his intent to commence arbitral proceedings, then also the court/Tribunal can ask such party regarding his intention and also the time needed by him for approaching the Arbitral Tribunal and impose conditions while passing any order in his favour.

7. He submits that the Hon’ble Supreme Court, in the above judgment, has further held that the court while passing an order under Section 9 of the Act may put the party seeking interim relief on terms and may recall the order, if he commits breach of the terms imposed by the Court. Thus, it is contended by learned counsel for the appellant that the judgment relied upon by learned Commercial Court nowhere provides that in case of non-disclosure of intent to approach Arbitral Tribunal, interim relief has to be denied.

8. He further submits that sub-section 2 and sub-section 3 were inserted in Section 9 of the Act vide Act No. 3 of 2016 w.e.f. 23.10.2015. Sub-Section 2 and sub-section 3 of Section 9 of the Act as amended by Act No. 3 of 2016 are extracted below:-

“9. Interim measures, etc. by Court.-

[1]

[(2)Where, before the commencement of the arbitral proceedings, a Court passes an order for any



interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.]

[(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]”

9. This Court finds substance in the submission made by learned counsel for the appellant that in a case where willingness of the party approaching a court for interim relief, is not disclosed in the application or the time within which that party would approach the Arbitral Tribunal is not indicated, then also arbitral proceedings have to be commenced within a period of 90 days of passing of the order or within such further time as the court may determine in view of provision contained in Sub-section (2) of Section 9 of the Act. The judgment relied by learned Commercial Court was before amendment and after amendment in the Act, position has become more clear. Thus, rejection of the application for interim relief by learned Commercial Court by misreading the judgment rendered in “Firm Ashok Traders” (supra) is unsustainable.

10. Learned Commercial Court has also considered the three factors, namely, *prima facie* case, balance of convenience and irreparable injury, which ought not have been considered, since appellant was non-suited on the ground of non-disclosure of his intent to approach the Arbitral Tribunal. Therefore, the finding returned by learned Commercial Court on these factors is set-aside.



2025:UHC:1545-DB

11. Accordingly, the present appeal is allowed. Impugned order dated 23.12.2024 passed by learned Additional District Judge (Commercial Court), Dehradun is hereby set-aside. The matter is remitted back to the court concerned for deciding the interim relief application afresh, on merits, uninfluenced by any observation made in the impugned order.

(VivekBharti Sharma, J.)
06.03.2025

(Manoj Kumar Tiwari, J.)
06.03.2025

Mamta/Akash