Regular List
Sr. No. 62

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

AA No. 3/2021
CM No. 3214/2021

Union of India .....Petitioner(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC.

Vs

M/s Des Raj Nagpal ..... Respondent(s)

Through: Ms. Nancy Mahajan, Advocate.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
06.03.2026

01. Through the medium of the present appeal under section 37 of the J&K Arbitration and Conciliation Act, 1997 (hereinafter to be referred to as **"Act of 1997"**), the appellant has thrown challenge to order dated 15.02.2021 passed by the court of learned 1st Additional District Judge, Jammu whereby petition of the appellant under section 34 of the Act of 1997 for setting aside the arbitration award dated 22.09.2015 passed by the sole arbitrator-Sh. S. K. Gupta, Chief Engineer (QS&C) has been dismissed.

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02. Heard and considered.

03. The sole ground on the basis of which learned 1st Additional District Judge, Jammu has dismissed the petition of the appellant under section 34 of the Act of 1997 is that the Chief Engineer, who was a party to the arbitration agreement/arbitration proceedings, has not filed the said petition but it has been filed by the Garrison Engineer, who is not party to the arbitration agreement. It has been held by the learned 1st Additional District Judge, Jammu that the

Garrison Engineer cannot step into the shoes of the Chief Engineer and challenge the arbitral award. Accordingly, the petition has been dismissed on this ground alone.

04. Learned counsel for the appellant has produced before this Court a copy of the judgment dated 03.01.2025 passed by the Division Bench of this Court in arbitration appeal bearing Arb App No. 1/2022 wherein a similar issue has been determined by the Division Bench. In fact, the said judgment has been passed in a case involving the same parties but arising out of different arbitration proceedings.

05. The Division Bench in the aforesaid case has while dealing with the issue as to whether Garrison Engineer is competent to file a petition under section 34 of the Act of 1997 in a case where the arbitration agreement has been signed by the Chief Engineer, observed as under:

> "11. In the contract, which contains an arbitration clause, there are only two parties, one Union of India and the other the respondent-contractor. The contracts on behalf of Union of India in terms of Article 299 of the Constitution of India are expressed to be made by the President and the same are executed by such person or persons and in such manner as the President may direct or otherwise. The authority of the Chief Engineer to execute the contract containing arbitration clause on behalf of the President is not in dispute. We would, therefore, hold that notwithstanding a contract by the Union of India is made by the President and executed through its authorized officer, neither the president nor its authorized officer becomes party to the contract. The party to the contract shall only be the Union of India.
>
> 13. Otherwise also, from a perusal of the application filed by the appellants before the learned Single Judge, it clearly transpires that the Union of India through Chief Engineer is also a party, though the application was signed by the Garrison Engineer. In that view of the matter, failure of the Chief Engineer to sign the pleadings, which were signed by the Garrison Engineer would only be

> an irregularity and a curable defect and would not entail dismissal of the application without providing opportunity to the appellants to correct the irregularity. The defect, if at all it has there, was curable and was not fatal to the maintainability of the application itself."

06. In view of what has been observed by the Division Bench in the aforesaid judgment, it is clear that it was not open to learned 1st Additional District Judge, Jammu to dismiss the petition under section 34 of the Act of 1997 on the sole ground that the said petition had been filed by the Garrison Engineer and not by the Chief Engineer. The impugned order passed by learned 1st Additional District Judge, Jammu is not sustainable in law and deserves to be set aside.

07. Accordingly, the present appeal is **allowed** and the impugned order dated 15.02.2021 passed by the learned 1st Additional District Judge, Jammu is set aside and the matter is remanded to the Commercial Court, Jammu for its decision on merits in accordance with law. Learned 1st Additional District Judge, Jammu shall transmit the record of the case to the Commercial Court, Jammu forthwith. The parties shall appear before the Commercial Court, Jammu on **15.04.2026**.

08. Copies of this order be forwarded to both the aforesaid Courts for information.

(SANJAY DHAR)
JUDGE

Jammu
06.03.2026
Shivalee

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Shivalee Khajuria
2026.03.09 17.48
I attest to the accuracy and
integrity of this document
Jammu