

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

RFA No. 15/2023

Reserved on: 30.06.2026

Pronounced on: 03.07.2026

Uploaded on: 03.07.2026

Whether the operative part or full
judgment is pronounced: *Full*

**Union Territory of J&K through
Chief Secretary & Ors.**

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

Through: Mr. Ilyas Nazir Laway, GA

Abdul Rashid Gilkar

...Respondent(s)

Through: Mr. Mian Tufail, Adv. with
Mr. Babar Bilal Malik, Adv.

CORAM:

HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

J U D G M E N T

1. This Regular First Appeal is directed against the order dated 29 August 2022, whereby the learned Principal District Judge, Anantnag [“the trial court”] had made the arbitral award as the rule of the court and the suit was decreed.

Factual Matrix:

2. The respondent (plaintiff) has instituted a suit in the year 2005 for the recovery of Rs. 50.65 Lacs against the appellants (defendants) on account of construction work of Bridge at Brakpora.

3. Issues came to be framed in the year 2012, however, the parties before the trial court through their counsels have filed joint motion, and accordingly the matter was referred to arbitration in the year 2017 under Section 89 of Civil Procedure Code. However, the trial court with the consensus of the parties has reconstituted the Arbitral Tribunal vide order dated 18 June 2019 and file was consigned to records. To be more specific, initially the matter was referred to arbitration in the year 2017 to a Single Arbitrator, later arbitral tribunal was reconstituted comprising of Three-Member Tribunal.

Accordingly, the arbitral award was submitted before the trial court on 21 February 2022 awarding Rs. 25,52,365/- including interest in favour of the respondent (plaintiff).

4. It is in the above backdrop, the trial court, after noting the factual matrix, proceed to make the arbitral award as rule of the court and also decreed the suit.

Submissions and Challenge:

5. The principal contention urged on behalf of the appellants is that once the dispute stood referred to arbitration under Section 89 of the Code of Civil Procedure, the provisions of the Arbitration and Conciliation Act, 1996 [AC Act] became exclusively applicable. Therefore, the trial court erred in making the arbitral award as the rule of the court and also committed illegality in decreeing the suit.

6. According to appellants, once the dispute is referred to arbitration under Section 89 of CPC, the Civil Court does not retain the jurisdiction to entertain the final award and to pass decree thereon. Therefore, the order impugned and the decree passed by the trial court suffer from jurisdictional error and are required to be set-aside.

7. *Per contra*, learned counsel appearing for the respondent submitted at the Bar that he did not wish to file objections. The only contention raised is that respondent should not be made to suffer once award of the arbitral tribunal is passed in his favour, but because of the pendency of these proceedings, respondent could not get the awarded amount after due execution of the construction work.

Analysis and Conclusion:

8. Heard learned counsels for the parties.

9. The controversy involved lies in narrow compass: whether, after the dispute is referred to arbitration under Section 89 CPC, the Civil Court retains the jurisdiction to examine the arbitral award on merits or to make it the rule of the court.

10. Section 35 of AC Act makes it clear that the arbitral award is final and binding on the parties. It is executable/enforceable directly as if it were a decree of the Court under Section 36 of the AC Act, without referring the Civil Court needing to pass a decree or examine it afresh.

11. Unlike Mediation, Conciliation or Lok Adalat, where the settlement is placed before the referring court for a decree under Order 23 Rule 3 CPC, an arbitral award under Section 89 of CPC does not come back to the referring Civil Court. It is so because there is no “**failure or unsuccessful report**” mechanism and thus the court does not examine or confirm the award.

12. In any case, if the party is aggrieved of the arbitral award, the remedy lies only under Section 34 of the AC Act before the court, as defined in Section 2(1) (e) of the AC Act. It is also well settled that after the limitation for taking recourse under Section 34 of AC Act expires, or the challenge to the arbitral award is rejected, the award can be enforced under the provisions of Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court, as mandated under Section 36 of the AC Act.

13. From the above analysis, what is discernible is that once dispute is referred to arbitration under Section 89 CPC, the suit permanently exits the Court’s stream. Thereupon, the arbitral proceedings are exclusively governed by the Arbitration and Conciliation Act, 1996. The referring Civil Court does not retain jurisdiction to make the award a rule of the court or pass a decree in the suit. Therefore, the trial court has erroneously made the award rule of the court, which has traces of the old Arbitration Act, 1940.

14. While dealing with the scope of Section 89 of Civil Procedure Code qua the arbitration, Hon’ble the Supreme Court in **Afcons Infrastructure Ltd. & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. and Ors. 2010 AIR SCW 4983** unequivocally held that once there is an agreement in writing signed by parties, the matter can be referred to arbitration under Section 89 of the Code and on such reference, the provisions of AC Act will apply to the arbitration, and as noticed in Salem Bar-I, the case will go outside the stream of the court permanently and will not come back to the Court. In this regard, Para 23 of the judgment reads thus:

“23. Arbitration is an adjudicatory dispute resolution process by a private forum, governed by the provisions of the AC Act. The said Act makes it clear that there can be

reference to arbitration only if there is an 'arbitration agreement' between the parties. If there was a pre-existing arbitration agreement between the parties, in all probability, even before the suit reaches the stage governed by Order 10 of the Code, the matter would have stood referred to arbitration either by invoking [section 8](#) or [section 11](#) of the AC Act, and there would be no need to have recourse to arbitration under section 89 of the Code. Section 89 therefore pre-supposes that there is no pre-existing arbitration agreement. Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration when the choice of ADR processes is offered to them by the court under section 89 of the Code. Such agreement can be by means of a joint memo or joint application or a joint affidavit before the court, or by record of the agreement by the court in the order sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under section 89 of the Code; and on such reference, the provisions of [AC Act](#) will apply to the arbitration, and as noticed in Salem Bar-I, the case will go outside the stream of the court permanently and will not come back to the court.”

15. On a conjoint reading of Section 89 CPC and Section 34, 35 and 36 of AC Act, it is made abundantly clear that once the Civil Court exercises jurisdiction under Section 89 CPC and refers the dispute to arbitration, it becomes *functus officio* and thus, for redressal of any grievance regarding the arbitral award, the parties have the remedy before the court under Section 34 or Section 36 of the AC Act.

16. In the above backdrop, the trial court found to have assumed jurisdiction which does not vest in it and thus committed patent illegality in passing the impugned order and the resultant decree. Accordingly, same does not sustain when tested on the anvil of law.

17. As a result, the appeal is allowed and the order and decree dated 29 August 2022 is set-aside.

18. However, the parties are at liberty to avail appropriate remedy if so advised and the time consumed in pursuing the remedy before this Court shall not come in their way while calculating the limitation period.

19. Disposed of.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR:
03.07.2026
Altaf

Whether approved for reporting? Yes