

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CARBA No. 24 of 2026

Decided on: 23.09.2026

State of Himachal Pradesh & others

...Appellants

Versus

Sh. Sanjeev Kumar Thakur

...Respondent

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting?¹

For the Appellants:

Mr. Anup Rattan, Advocate General
with Mr. S.D.Vasudeva, Deputy
Advocate General.

For the respondent:

Mr. Dhiraj Thakur, Advocate.
-----**Sandeep Sharma, J. (Oral)****CARAP(M) No.5 of 2026**

By way of instant application, prayer has been made on behalf of the applicants/appellants for condonation of delay in filing the accompanying appeal, which is barred by limitation.

2. Having carefully perused the averments contained in the application, which is duly supported by an affidavit, this Court is convinced and satisfied that delay in maintaining the accompanying appeal is neither intentional nor deliberate, rather same has occurred on the account of the lengthy administrative process and as such, delay of 40 days in filing the appeal, which in my considered view has been sufficiently explained, is condoned. The appeal be registered. The application stands disposed of.

¹ Whether reporters of the local papers may be allowed to see the judgment?

CARBA No. 24 of 2026

3. By way of present appeal filed under S.37 of the Arbitration and Conciliation Act, 1996, challenge has been made to judgment dated 08.07.2025 passed by learned District Judge, Mandi in Arb. Case No. 202 of 2023, whereby objections under S.34 of the Act *ibid*, against award dated 07.11.2022 passed by Arbitral Tribunal (Former District & Sessions Judge) Lall Lodge Ganpati Road Mandi, District Mandi, Himachal Pradesh, have been dismissed.

4. Brief facts of the case are that the respondent/ Contractor entered into an agreement No.151 with the respondents No.1 to 5 regarding construction of “Kahi da Bahal” to “Sukrala via Khatrod Panyali Jattan” Road. After entering into the agreement, the Applicant/Claimant started the work in accordance with the approved tender and drawings. On 03.06.2015 and 02.06.2016, the representatives of the appellants/State inspected the work site at Khatrod road site abutment and found it unsustainable being loose strata. As per the contractor, before the said inspection, he had already excavated the work site by spending huge money. The clearance of loose strata and debris was also resorted to by the respondent/Contractor and this fact was brought to the notice of the appellants No.4 and 5. As per the respondent/Contractor, the appellants did not perform reciprocal promise of their performance under the contract and the Khatrod road site abutment was found unworkable by themselves alone, which act on their

part was sufficient to render the tender as infeasible and unworthy of execution and therefore, the performance of the contract was suspended and this fact led to the revision of the original substructure drawings by the respondents themselves. Thereafter on 25.07.2016, the appellants revised the substructure drawings vide which they increased the span of the bridge from 16.75 meters to 30 meters and also substituted the RCC T-Beam bridge to RCC Box Girder bridge, thereby, the tender was put to complete variations by modifying the basic structure. Initially the contract was awarded for an amount of Rs.34,22,732/-, however, after the revision of the structural drawings the cost went high and the respondent/ Contractor was paid an amount of Rs.62,88,318/-. It is submitted that the increase of the contract amount was 83.72% over and above the initial amount. The respondent/Contractor claimed himself to be entitled for the payment of work-done for the quantity executed beyond the deviation limit in accordance with clause 12A of the agreement, which payment was withheld by the appellants and committed breach of clause 12A of the agreement. It is submitted that thereafter, the appellant No.5 assured the respondent/ Contractor vide letter dated 18.01.2017 that whatsoever work completed or executed beyond 30% of the deviated quantity shall be paid to the claimant in accordance with the terms and conditions of the agreement. As per the contractor, the re-execution work of Khatrod road site abutment was wrongly assessed and paid to the claimant/contractor by the appellant No.5 and the Contractor was awarded approved analysis of rate for extra item of work @ Rs. 80 per cubic meter, which was objected by him

being illegal, unwarranted and uncalled for. As per the contractor, on 31.03.2018, the respondent No.5 got executed an undertaking from the applicant/contractor under duress, undue influence and coercion so as to force him not to protest before any forum or court with regard to less amount of payment illegally made to him for the additional and deviated work-done.

5. The respondent/contractor raised dispute and approached this Court for appointment of Arbitrator and this Court vide order dated 26.03.2020 appointed Kr. Mrigander Singh, District and Sessions Judge (Rtd.), Lall Lodge, Ganpati Road, Mandi as Arbitrator and ordered to enter into reference and adjudicate the dispute between the parties as per Arbitration and Conciliation Act, 1996. Ld. Arbitrator entered into reference and the parties submitted the statement of claim and defence before the Ld. Arbitrator. The respondent/contractor filed following claims:-

Claim No.1	Cost for the work executed beyond deviation limit.	Rs.18,15,761/-
Claim No.2(a)	Excavation for roadways in hard rock	Rs.20,13,808/-
Claim No.2(b)	Plain, Cement and Concrete in open foundation, PCC, Grade M-15	Rs.1,06,833/-
Claim No.3	Escalation cost for the work executed during contract period and for work undertaken after contract period market rate	Rs.73,776/-
Claim No.4	On account of profit percentage and head office over head charges due to prolongation of the contract	Rs.12,30,472
Claim	Arbitration fee and	To be calculated at

No.5	administrative assistance remuneration.	the time of award.
Claim No.6	Amount recoverable as legal fee in favour of the claimant.	To be calculated at the time of award.

6. Learned Arbitrator passed the award dated 07.11.2022, In favour of the respondent/contractor and against the appellants/ objectors to the following effect:

Claim No.1	Cost for the work executed beyond deviation limit.	Rs.11,05,354/-
Claim No.2(a)	Excavation for roadways in hard rock	Rs.12,86,549/-
Claim No.2(b)	Plain, Cement and Concrete in open foundation, PCC, Grade M-15	Rs.28,395/-
Claim No.3	Escalation cost for the work executed during contract period and for work undertaken after contract period market rate	Rs.73,776/-
Claim No.4	On account of profit percentage and head office over head charges due to prolongation of the contract	Rs.2,00,000/-
Claim No.5	Arbitration fee and administrative assistance remuneration.	Rs.1,54,200/-
Claim No.6	Amount recoverable as legal fee in favour of the claimant.	Rs.60,000/-

7. Feeling aggrieved, appellants and respondent preferred Objections under S.34 of the Act *ibid* in the court of learned District

Judge, Mandi which came to be registered as Arbitration Case No. 202 of 2023, respectively. The objections were instituted on 17.11.2023.

8. Nonetheless, learned District Judge, vide judgment dated 08.07.2025, dismissed both the objections and upheld the award passed by Arbitrator. Feeling aggrieved, the appellants have approached this Court, in the instant proceedings, laying challenge to the judgment passed by learned District Judge, on various grounds as mentioned in the appeal.

9. However, before going into the claim and counter-claim of the parties, it would be relevant to note that the dispute in question is a commercial dispute, as per Commercial Courts Act, 2015, wherein 'commercial dispute' has been defined as under:

“(c) “commercial dispute” means a dispute arising out of—

- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;
- (ii) export or import of merchandise or services;
- (iii) issues relating to admiralty and maritime law;
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- (v) carriage of goods;
- (vi) construction and infrastructure contracts, including tenders;
- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (xii) shareholders agreements;

- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”

10. The Commercial Courts Act, 2015, was notified vide Act No.4 of 2016 and as per S. 1(3), (3) it shall be deemed to have come into force on the 23rd day of October, 2015. S.3 of aforesaid Act, provides that the State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those

Courts under this Act, however, fact of the matter is that commercial courts at District level were notified vide Notification dated 13.5.2026 by the Home Department, Government of Himachal Pradesh, whereby Civil Judge can decide commercial disputes of Rs.3.00 Lakh to Rs.30.00 Lakh, Senior Civil Judge, Rs.30.00 Lakh to Rs.60.00 Lakh and District Judge/Additional District Judge from Rs.60.00 Lakh to Rs.1.00 Crore.

11. Coming to facts of present case, when objections were presented by appellants and the respondent to learned District Judge on 17.11.2023, said court was not designated as 'commercial court' in terms of S.3 of 2015 Act and as such, it had no jurisdiction to entertain the dispute, same being a 'commercial dispute'.

12. Aforesaid position has been clarified by co-ordinate Benches of this Court in **Nitin Sonkhia v. Executive Engineer HPPWD Mandi Division No.II, Distt. Mandi, H.P.** CARBA No. 07 of 2025, decided on 19.3.2026, wherein, it has been held as under:

"5. Having heard the learned Counsel for the parties and having perused the statutory provisions of the Commercial Courts Act and taking into consideration the fact that the dispute in hand relates to a commercial dispute, this petition is allowed by holding that the judgment passed by the learned District Judge in the objections filed by the present petitioner under Section 34 of the Arbitration and Conciliation Act against the arbitral award, details whereof are given herein above, is nonest and without jurisdiction.

6. Sub-section (1) of Section 3 of the Commercial Courts Act inter alia provides that the State Government may, after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the

jurisdiction and powers conferred on those Courts under the said Act.

7. Sub-section (2) of Section 3 of the Act further provides that State Government shall, after consultation with the concerned High Court, by notification specify, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits. 8. Similarly, Sub Section (3) thereof provides that State Government may, with the concurrence of the Chief Justice of the High Court, appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a Commercial Court either at the level of District Judge or a Court below the level of a District Judge.

9. Therefore, in order for a Court to excise the power of Commercial Court, the procedure prescribed under Section 3 of the Commercial Act, should have been complied with. As admittedly in the present case, neither at the time of filing of the objections or at the time of adjudication thereof, the Court in issue stood constituted as a Commercial Court, nor the provisions of Sub Sections (2) and (3) of Section 3 of Commercial Courts Act were complied with, the judgment under challenge passed by learned District Judge is per se without jurisdiction.”

13. Aforesaid position was reiterated by same Co-ordinate Bench of this Court in **State of Himachal Pradesh and another v. Dina Nath**, CARBA No. 1 of 2026, decided on 9.7.2026. Since the very institution of objections, which involve a ‘commercial dispute’ arising out of tender, is defective, this court would refrain from going into merits and demerits of the arguments advanced by respective parties, who were unable to dispute that learned District Judge, Mandi, having not been notified as ‘commercial division’ under Commercial Courts Act, as late

as 2026, had no jurisdiction to try the dispute, present petition is disposed of; judgment dated 08.07.2025 passed by learned District Judge, Mandi in Arbitration Case No. 202 of 2023 is set aside and learned District Judge, Mandi is directed to return the objections filed by appellants and the respondent, to it for presenting the same before appropriate forum, in accordance with law, especially, S.3 of Commercial Courts Act. However, it is ordered that the period from the date of institution of present appeal till supply of a certified copy of this order to appellants and the respondent, shall be excluded while calculating limitation.

14. The appeal is accordingly disposed of, alongwith all pending applications.

(Sandeep Sharma)
Judge

September 23, 2026
(shankar)