

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

F.A.O.No.1748 of 2015 (O&M)

Date of Decision: September 09, 2015

**M/s Supreme Infrastructure India Ltd. Project Office at Kalpana Chawla
Medical College, Karnal**

...Appellant

Versus

**M/s HSCC India Ltd., Project Office at Kalpana Chawla, Medical College,
Karnal & others**

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr.S.K.Garg Narwana, Senior Advocate with
Mr.R.Kartikeya, Advocate,
for the appellant.**

**Mr.Saurabh Mishra, Advocate with
Mr.Vivek Tyagi, Advocate &
Mr.Hoshiar Singh, Advocate for
Mr.Sanjeev Sharma, Advocate,
for respondent Nos.1 & 2.**

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the impugned order dated 21.2.2015 passed by the Additional District Judge, Karnal, whereby the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”) has been dismissed.

Mr.S.K.Garg Narwana, learned Senior Advocate assisted by Mr.R.Kartikeya Advocate, appearing on behalf of the appellant submits that

the appellant-contractor was allotted the work for construction of Kalpana Chawla Hospital at Karnal. A dispute had arisen with regard to the performance of the contract, which entailed for seeking interim measures by filing a petition under Section 9 of the 1996 Act. In lieu of the contract, performance bank guarantee was given by the contractor. Since the department was threatening to encash the bank guarantee, it necessitated the contractor to knock the door of the Court seeking interim measures and as well as for stay of the termination of the work under Section 9 of 1996 Act as the contract envisaged the arbitration dispute. He further submits that even before the petition could be filed, the performance bank guarantee has been encashed.

Mr.Saurabh Mishra Advocate assisted by Mr.Vivek Tyagi, Advocate appearing on behalf of respondent Nos.1 and 2 submits that the contract has already been cancelled and has been allotted to new contractor. If the contractor has any grievance, he can seek appointment of the arbitrator for adjudication of the dispute and not in the manner and mode it is being pursued and, therefore, no cause of action survives in the present petition of the petitioner.

I have heard the learned counsel for the parties and appraised the paper book.

It is still a mystery whether the contractor has sought the appointment of arbitrator by sending a notice as per the arbitration clause. As per the provisions of Section 9 of the 1996 Act, interim measures have to be followed only by seeking a reference of dispute, if any, to the arbitrator. The parties cannot be permitted to linger on the dispute seeking interim

measures without resorting to the aforementioned provisions.

Since the performance bank guarantee, which was sought to be secured by way of interim measures, has already been encashed, no cause of action subsisted in favour of the contractor. In my view, the findings rendered by the Court below do not suffer from any illegality and perversity. I do not find any justification to interfere in the findings of the Court below.

In what of what has been observed above, the appeal is dismissed.

September 09, 2015
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(AMIT RAWAL)
JUDGE