

Regular List
Serial No. 25

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

AA No. 25/2024

Bikram Singh Slathia

.....Appellant

Through: Mr. Anil Khajuria, Advocate.

Vs

Municipal Council Udhampur & Ors.

.....Respondents

Through: Mrs. Monika Kohli, Sr. AAG

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

ORDER
(30.01.2026)

01. The appellant, through the medium of the present appeal, has challenged order dated 30.10.2024 passed by learned Principal District Judge, Udhampur whereby his petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been dismissed.

02. Heard and considered.

03. It appears that a petition under Section 9 of the Arbitration and Conciliation Act came to be filed by the appellant against the respondents before the court of learned Principal District Judge, Udhampur (hereinafter to be referred to as “**trial court**”) seeking certain interim orders including stay of operation of notice No. MCU/2023/2933-36 dated 04-08-2023, issued by respondent No. 2, by virtue of which the appellant has been called

upon to deposit an alleged outstanding rent of Rs.27,83,979/- within a period of seven days and it is provided that in the event of appellant's failure, respondent shall seal and take over the possession of leased premises.

04. The appellant has also sought a direction for temporarily restraining the respondents to forcibly evict him from the demised premises without adopting due process of law.

05. The learned trial court, after analyzing the pleadings of the parties, proceeded to deal with the objection raised by the respondents with regard to the maintainability of the petition on the ground that the appellant has not filed the petition under Commercial Courts Act, 2015 and that the trial court did not have jurisdiction to entertain and decide the said petition. The learned trial court proceeded to uphold the aforesaid objection raised by the respondents and observed that because the appellant has filed the petition simply under the provisions of Arbitration and Conciliation Act and not under the provisions of Commercial Courts Act, 2015, therefore, the petition is not maintainable and the court lacks jurisdiction to adjudicate upon the same. In spite holding so, the learned trial court proceeded to consider the petition on its merits and came to the conclusion that the appellant has failed to satisfy the parameters for grant of relief of injunction in terms of Section 9 of the Arbitration and Conciliation Act. On this ground also, the petition was found to be without any merit.

06. The impugned order passed by the learned trial court, as is clear from its perusal, is manifestly contradictory in nature. On the one hand, the learned trial court has proceeded to hold that it does not have jurisdiction to entertain the petition because the subject matter of the dispute qualifies to be a 'commercial dispute' and is cognizable by a commercial court and not by a regular civil court, but on the other the learned trial court has proceeded to consider the petition filed by the appellant on its merits whereafter it has been held that the appellant/petitioner has failed to satisfy the parameters of Section 9 of the Arbitration and Conciliation Act so as to entitle him to grant of reliefs prayed for in the petition. If the learned trial court did not have jurisdiction to entertain the petition, it was not open to the said court to deal with the merits of the case. The order impugned on this ground alone is liable to be set aside.

07. There is, however, yet another aspect of the matter, which is required to be noticed. The subject matter of the dispute is admittedly a commercial dispute as defined under Section 2(1) (c) of the Commercial Courts Act, 2015. The subject matter of the petition admittedly exceeds the specified value. As per Section 10(3) of the Commercial Courts Act, 2015, all applications arising out of arbitration involving commercial dispute of a specified value that would ordinarily lie before any principal civil court of original jurisdiction in a district have to be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over

such arbitration where such Commercial Court has been constituted.

08. As per S.O 47 dated 04.02.2020, the Government of UT of J&K has designated the courts of Additional District Judge (Bank Cases) at Jammu and Srinagar respectively as also the Principal District Courts of all other districts of Union Territory of Jammu and Kashmir as Commercial Courts within their respective jurisdiction. Thus, the trial court i.e., the court of learned Principal District Judge, Udhampur stands designated as a Commercial Court in terms of sub-section (1) of Section 3 of the Commercial Courts Act. The said court functions in dual capacity, one as an ordinary principal civil court of ordinary jurisdiction and other as a commercial court. Merely because the appellant did not address his petition to the Commercial Court and instead addressed his petition to Principal District Judge, Udhampur does not mean that the said court did not have jurisdiction to entertain and decide the dispute raised by the appellant/petitioner in his petition filed under Section 9 of the Arbitration and Conciliation Act, 2015. In fact, the learned trial court has noticed the provisions of S.O 47 dated 04.02.2020 in its impugned order but still proceeded to hold that it did not have jurisdiction to entertain the petition. The course adopted by the learned trial court in these circumstances is contrary to the legal position.

09. For what has been discussed hereinbefore, the appeal is allowed and the impugned order passed by the learned Principal

District Judge, Udhampur is set aside. The matter is remanded to the said Court for its fresh decision on merits by adopting the procedure provided under Commercial Courts Act, 2015. It is made clear that while passing fresh order, the trial court shall not get influenced by the observations made by it in the impugned order. The parties are directed to appear before the Commercial Court (court of Principal District Judge), Udhampur on **28.02.2026**.

10. Interim direction dated 01.01.2025 passed by this Court shall continue to operate till such time the matter is considered afresh by the court below.

JAMMU
30.01.2026
Naresh/Secy.

(SANJAY DHAR)
JUDGE

Whether the order is speaking: **Yes/No**

Whether the order is reportable: **Yes/No**