HIGH COURT OF JAMMU &KASHMIR AND LADAKH
AT JAMMU

…

Arb P No.26/2025

Reserved on: 29.05.2026
Pronounced on: 03.07.2026
Uploaded on: 03.07.2026

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

M/s Chenab Machinery and Engineering Pvt. Ltd. IID Center, Govindsar, Industrial Area, Kathua through its Director, Vijay Aggarwal, Age 38 years S/o Sh Sunder Lal Aggarwal R/o 51-Adarsh Nagar, Bhiwani, Haryana.

…….Petitioner(s)

Through: **Mr. Anil Khajuria, Advocate**

Versus

Shri Mata Vaishno Devi Shrine Board Katra through its Chief Executive Officer, Tehsil Katra, District Reasi,

……Respondent(s)

Through: **Mr. Atul Verma, Advocate vice**
Mr. Adarsh Sharma, Sr. Adv.

CORAM: HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This petition is filed by the petitioner under Section 14(2) of the Arbitration and Conciliation Act, 1996 (for short "the Act") for termination of the mandate of the Sole Arbitrator, appointed vide order dated 10th November 2023 in AP No. 14/2022 titled *"M/s Chenab Machinery & Engineering Pvt. Ltd. v. Shri Mata Vaishno*

Devi Shrine Board, Katra", and for the consequential appointment of another independent arbitrator.

2. The disputes arose between the parties regarding the contract awarded to the petitioner for the manufacture, supply, erection, testing, and completion of a 2 Km modular shelter shed between RD 2/800 and RD 5/100 on the Tarakote Marg of Shri Mata Vaishno Devi Ji Shrine from Katra to Adhkawari. This necessitated the filing of Arbitration Petition No. 14/2022, which was disposed of vide order dated 10th November 2023, whereby the Sole Arbitrator was appointed to adjudicate the disputes between the parties. Upon entering upon the reference, the learned Arbitrator issued notice to the parties, following which the petitioner filed its statement of claim in June 2024, and the respondent filed its statement of defence in September 2024.

3. The petitioner submits that they were duly represented by counsel before the learned Arbitrator. However, on August 17, 2024, when an office colleague of the petitioner's engaged counsel appeared, the learned Arbitrator refused to record her presence. The learned Arbitrator further declined to disclose the next date of hearing on the pretext that she had not filed a *Vakalatnama* and was therefore unauthorized to appear. Consequently, despite the matter being scheduled for September 7, 2024, the colleague was barred from participating. The petitioner further urges that on September 9, 2024, an associate of the petitioner's counsel appeared before the learned Arbitrator and received the statement of defense; however, even on that date, the next hearing date was not conveyed to him. It is also

asserted by the petitioner that the learned Arbitrator had not engaged any Assistant, from whom the dates in the matter could be obtained and when the learned Arbitrator was contacted on phone, he would feel offended and not answer calls.

4. Subsequently, on October 21, 2024, the petitioner received a communication dated October 17, 2024, from the learned Arbitrator, conveying the termination (closure) of the arbitral proceedings under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996. Notably, the formal termination order was passed by the Arbitrator on October 5, 2024 on account of absence of the parties. The petitioner made an endeavor to move an application to recall the said termination order, but the learned Arbitrator could not be approached and later did not accept the application sent to the learned Arbitrator on his e-mail account.

5. Upon service of notice, the respondent caused its appearance and filed reply/objections. The primary contention of the respondent is that the petitioner remained absent for three consecutive hearings, i.e. September 21, 2024, September 28, 2024, and October 5, 2024. Consequently, the learned Arbitrator invoked the provisions of Section 32(2)(c) of the Arbitration and Conciliation Act, 1996. The respondent submits that as a corollary, the mandate of the Arbitrator stands automatically terminated by operation of law, and no formal termination under Section 14 is required unless a dispute arises regarding the Arbitrator's conduct, bias, or inability to act, which is not the case here. Furthermore, it is contended that the appropriate

remedy for the petitioner, if any, is to challenge the termination order passed under Section 32(2)(c) of the Act before a competent court.

6. Heard learned counsel appearing for the parties and perused the record on the file.

7. Vide order dated November 10, 2023, the application preferred by the petitioner for the appointment of an arbitrator was disposed of, whereby the sole arbitrator was appointed to adjudicate the disputes between the parties and pass an award in accordance with law.

8. After the Arbitrator entered reference, the petitioner filed its statement of facts, followed by the respondent's submission of its statement of defence.

9. As recorded in the learned Arbitrator's order (Annexure II to the petition), the petitioner failed to appear on the scheduled dates of hearing, i.e. September 21, 2024, September 28, 2024, and October 5, 2024. Consequently, the arbitral proceedings were closed in terms of Section 32(2)(c) of the Act. For the sake of clarity and convenience, the provisions of Section 32(2)(c) of the Act are reproduced hereinbelow:

> "32. Termination of proceedings.
> ……
> (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where
> …..
> (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible."

10. Section 32(2)(c) allows an arbitrator to terminate arbitral proceedings if "the continuation of the proceedings has for any reason become unnecessary or impossible". The phrase "unnecessary or impossible"

signifies circumstances which render performance of adjudicatory function futile or incapable to be performed. They concern involuntary circumstances beyond the arbitrator's control, not matters that can be voluntarily waived.

11. In **"Dani Wooltex Corpn. v. Sheil Properties (P) Ltd., (2024) 7 SCC 1",** the Hon'ble Apex Court has examined in detail the power of Arbitrator to terminate the proceedings in terms of section 32 of the Act. The relevant paras are extracted as under:

> **10.** The issue of the parties' default is dealt with in Section 25 of the Arbitration Act. Section 25 reads thus:
> "**25.** ***Default of a party***.—Unless otherwise agreed by the parties, where, without showing sufficient cause—
> (*a*) *the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall terminate the proceedings*;
> (*b*) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.
> (*c*) *a party fails to appear at an oral hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the arbitral award on the evidence before it*."
>
> **25.1. The power under clause (*c*) of sub-section (2) of Section 32 of the Arbitration Act can be exercised only if, for some reason, the continuation of proceedings has become unnecessary or impossible. Unless the Arbitral Tribunal records its satisfaction based on the material on record that proceedings have become unnecessary or impossible, the power under clause (*c*) of sub-section (2) of Section 32 cannot be exercised. If the said power is exercised casually, it will defeat the very object of enacting the Arbitration Act**;
>
> **25.2.** It is the Arbitral Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request. It is the duty of the Arbitral Tribunal to adjudicate upon the dispute referred to it. If, on a date fixed for a meeting/hearing, the parties remain absent without any reasonable cause, the Arbitral Tribunal can always take recourse to the relevant provisions of the Arbitration Act, such as Section 25;

> **25.3.** The failure of the claimant to request the Arbitral Tribunal to fix a date for hearing, per se, is no ground to conclude that the proceedings have become unnecessary; and
>
> **25.4. The abandonment of the claim by a claimant can be a ground to invoke clause (*c*) of sub-section (2) of Section 32. The abandonment of the claim can be either express or implied. The abandonment cannot be readily inferred. There is an implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his/her claim can an inference of abandonment be drawn. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. Only because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, the failure of the claimant, per se, will not amount to the abandonment of the claim.**
>
> (emphasis added)

12. In the present case, both the parties had filed their claims before the learned Arbitrator, and once the same were filed, the learned Arbitrator could not have resorted to provisions contained in section 32(2)(c) of the Act to terminate the proceedings, in view of the judgment of the Hon'ble Apex Court as referred to above, particularly when he was not of the view that there was an abandonment of the claim on the part of petitioner. Accordingly, the order of termination of proceedings is not sustainable in the eyes of law and the same is set aside.

13. It now remains to be considered whether to remit the matter to the sole Arbitrator appointed earlier or to appoint a substitute Arbitrator. Learned counsel for the respondent has submitted that the respondent would have no objection if substitute Arbitrator is appointed.

14. In ***Harshbir Singh Pannu and another v. Jaswinder Singh***, ***2025 SCC OnLine SC 2742,*** the Hon'ble Supreme Court has held as under:

415. A conspectus of our legal discussion is as under:—

(I) Section 32 of the Act, 1996 is exhaustive and covers all cases of termination of arbitral proceedings under the Act, 1996. The power of the arbitral tribunal to pass an order to terminate the proceedings under the scheme of the Act, 1996 lies only in Section 32(2).

(II) Sections 25, 30 and 38 of the Act, 1996 respectively, only denote the circumstances in which the tribunal would be empowered to take recourse to Section 32(2) and thereby, terminate the proceedings.

(III) The use of the expression "*the mandate of the Arbitral Tribunal shall terminate"* in Section 32 of the Act, 1996 and its omission in Section(s) 25, 30 and 38 of the said Act, cannot be construed to mean that the nature of termination under Section 32(2) is distinct from a termination under the other aforesaid provisions of the Act, 1996.

(IV) The expression "*mandate of the Arbitral Tribunal"* is merely descriptive of the function entrusted to the tribunal, namely, the authority and duty to adjudicate the disputes before it. It refers to the obligation of the arbitral tribunal to administer the arbitration by conducting the proceedings in order to adjudicate upon the disputes referred to it.

(V) Irrespective of whether the proceedings are terminated on account of the passing of a final award, or by the withdrawal of claims, or on account of default by the claimant, or the intervention of any impossibility in the continuation of the proceedings, the legal effect remains the same, inasmuch as the arbitral tribunal thereafter stands divested of its authority to act in the reference.

(VI) The common thread that runs across Sections 25, 30, 32 and 38 of the Act, 1996 respectively is that although the arbitral proceedings may get terminated for varied reasons, yet the consequence of such termination remains the same i.e., the arbitral reference stands concluded and the authority of the tribunal stands extinguished.

(VII) There is a clear distinction between a procedural review and a review on merits. The arbitral tribunal possesses the inherent procedural power to recall an order terminating the proceedings as such power is merely to correct an error apparent on the face of the record or to address a material fact that was overlooked. It does not tantamount to revisiting the findings of law or reappreciating the substantive issues already decided.

(VIII) Where an arbitral tribunal passes an order for terminating the proceedings under the Act, 1996, the appropriate remedy available to the parties would be to first file an application for recall of such order before the arbitral tribunal itself. The arbitral tribunal would then in turn be required to examine whether the order does or does not deserve to be recalled.

(IX) If a favourable order is passed for recommencing arbitration proceedings, the only option available to a party aggrieved therefrom, would be to participate in the proceedings and thereafter, challenge the final award under Section 34 of the Act, 1996.

(X) If, however, the recall application is dismissed, the party aggrieved therefrom, would be empowered to

> **approach the court under Section 14(2) of the Act, 1996. The court would then in turn examine whether the mandate of the arbitrator stood legally terminated or not. If it finds that the proceedings were not terminated in accordance with the law, it would be empowered to either set-aside the order of termination of proceedings and remand the matter to the arbitral tribunal, or, if the circumstances so require, proceed to appoint a substitute arbitrator in terms of Section 15 of the Act, 1996.**
>
> **(Emphasis added)**

15. In the present case, the petitioner claims to have filed an application for recalling of order dated 05.10.2024 by e-mail, as the Arbitrator could not be approached earlier. This fact has not been disputed by the respondents, and as such, in absence of denial of this fact, the same is deemed to have been admitted by the respondent. Under the normal circumstances, the matter ought to have been remitted to the learned Arbitrator but as the Arbitrator has not taken the cognizance of the application for recalling of order dated 05.10.2024 and respondent too has consented for substitution of Arbitrator, I deem it proper to terminate the mandate of earlier Arbitrator and appoint Sh. Shobha Ram Gandhi, Former District and Sessions Judge, as substitute sole Arbitrator sole to settle the dispute between the parties in accordance with law. Registry to inform the learned Arbitrator accordingly.

(Rajnesh Oswal)
Judge

Jammu
03.07.2026
Ajaz Ahmad, Secy

Whether approved for reporting? Yes