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**(2018) 12 J&K CK 0007**

**In the Jammu And Kashmir High Court**

**Case No :** Latters Patent Appeal (LPAOW) No.17 Of 2018, A No.1 Of 2018

**Super Publicity (P) Ltd @APPELLANT@Hash State Of Jammu & Kashmir  
And Others**

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**Date of Decision :** 07-12-2018

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 476

**Citation :** (2018) 12 J&K CK 0007

**Hon'ble Judges :** Gita Mittal, CJ;Tashi Rabstan, J

**Bench :** Division Bench

**Advocate :** Aditya Grover, Monika Kohli, Sachin Gupta

**Final Decision :** Disposed Off

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## **Judgement**

Gita Mittal, CJ

1. By way of the instant appeal, the appellant assails order dated 19th February, 2018 passed in CPOWP No.130/2016, OWP No.362/2016 as well as applications which were pending therein.

2. We have heard Mr. Aditya Grover, learned counsel for the appellant and Mr. Sachin Gupta, learned counsel appearing for the respondents at length.

3. We briefly set out the facts giving rise to the instant appeal to the extent necessary.

The appellant was awarded a contract in the year 2012 for the sole advertising rights through various modes on public property within the Jammu Municipal Corporation limits. An agreement dated 10th November, 2012 was executed between the parties. It is undisputed before us that the rights and liabilities of the parties flow from this agreement.

4. The appellant contends that the respondents were unable to discharge their part of the responsibilities under the agreement dated 10th November, 2012. Despite this position, the respondents are claimed to have illegally issued a communication dated 7th December, 2015 to the effect that no grace period

would be provided for the affected period. It is the submission of Mr. Aditya Grover, that in the communication dated 7th December, 2015, it was stated that the issue between the parties will be resolved. The appellant was constrained to file OWP No.362/2016 for the reason that without resolving any issue or taking any action on the representations made by the appellant, the respondents issued communication dated 23rd February, 2016, whereby they threatened to take action against installations of the appellant, in case the amounts for the subsequent year are not deposited.

5. Mr. Sachin Gupta, learned counsel appearing for the Jammu Municipal Corporation, staunchly contests the submissions made on behalf of the appellant. It is submitted that the claim of the appellant was for the period governed by the contract and that the appellant had approached the Corporation by way of representation made only when six months period of the contract was remained. It is further submitted that the amount which the Corporation claimed was due from the appellant as on 10th October, 2015. Mr. Sachin Gupta would contend that even the writ petition was filed in March, 2016 i.e. after the expiry of the period of contract.

Needless to say, the above position is disputed by Mr. Aditya Grover, learned counsel appearing for the appellant.

6. So far as, the writ petition is concerned, it appears that the agreement dated 10th November, 2012 was produced before the learned Single Judge on 19th February, 2018. On this date, the appellant was not represented before the learned Single Judge. The learned Single Judge noted that the Clause 10 of the agreement dated 10th November, 2012 contains an arbitration clause, which reads thus:-

"10. That in the event of any dispute to the interpretation of rights and liabilities arising out of this agreement, the same shall, at first instance, be amicably settled between the parties. If any dispute is not settled amicably, the same shall be referred to the sole arbitrator i.e. the Commissioner, Municipal Corporation, Jammu, who shall conduct the proceedings in accordance with the provision of the J&K Arbitration and Conciliation Act, 1997 and the rules made thereunder. The award given by the arbitrator shall be final and binding on the parties."

It is evident from the above that Clause 10 provides a remedy of arbitration in case of any dispute between the parties relating to the agreement.

7. Learned Single Judge formed an opinion that the appellant had thus an alternate efficacious remedy of ventilating his grievance before the forum agreed to by the parties and consequently disposed of the writ petition with liberty to the appellant to take recourse to such remedy as stood provided under Clause 10 of the agreement.

8. The appellant has filed the instant appeal aggrieved by order dated 19 th February, 2018. It has been contended by Mr. Aditya Grover, learned counsel for

the appellant, that so far as availability of alternate efficacious remedy is concerned, it is not an absolute bar to the maintainability of the writ petition. In support of this proposition, learned counsel has relied on a pronouncements of the Supreme Court at (2011)5SCC 697 Union of India and others v. Tania Construction Pvt. Ltd. and (2016) 10 SCC 571 Mahanadi Coalfields Ltd and others v. Dhansar Engineering Co. Pvt. Ltd. and others.

9. There can be no dispute at all to this well settled proposition. It is trite that the availability of alternate remedy is not an absolute bar to the maintainability of a writ petition. This is really a rule of prudence. The Court is required to examine as to whether the remedy which is available, is equally efficacious as the remedy of approaching the Court for issuance of appropriate writ.

10. Mr. Aditya Grover, learned counsel for the appellant would submit before us that the remedy under Clause 10 of the agreement is not efficacious also for the reason that the appellant has initiated proceedings under the J&K Contempt of Courts Act, 1997 against the Corporation officers. It is submitted that additionally, the appellant has also approached the Court under Section 476 of the Code of Criminal Procedure for initiating proceedings for perjury committed by the officials of the Municipal Corporation. The submission of Mr. Grover is, therefore, that the Commissioner, Municipal Corporation, Jammu who stands named as Arbitrator in Clause 10 of the agreement, would be influenced by the filing of these proceedings by the appellant and would not conduct the arbitration independently.

Be that as it may, the J&K Arbitration and Conciliation Act, 1997 provides the appropriate remedy to persons as the appellant, who are aggrieved by a named arbitrator being provided in the arbitration agreement.

11. Apart from availability of remedy of arbitration under Clause 10, it would also appear that the issues raised by the appellant in the writ petition are disputed questions of fact which the writ court would not have the competence to adjudicate upon. This is yet another circumstance, which would militate against the maintainability of the writ petition.

12. In view of the above, we are not inclined to accept the challenge to the judgment dated 19th February, 2018. However, in view of the objection of the appellant with regard to the fairness which would be expected from the named arbitrator under Clause 10 of the agreement dated 10th November, 2012, the appellant deserves to be allowed to make such petition/application and seek such remedy as would be legally permissible under the Jammu and Kashmir Arbitration and Conciliation Act, 1997.

13. Mr. Grover has also drawn our attention to the fact that vide interim order dated 14th March, 2016 passed by the learned Single Judge in OWP No.362/2016 it was directed as follows:-

"Four weeks' Notice.

Notice for objections.

Meanwhile, subject to deposit of license fees for fourth year as required in terms of letter dated 06.11.2012 sent to Petitioner by Joint Commissioner (Adm.), Municipal Corporation Jammu, amounting to Rupees Eighty Nine Lacs Four Hundred Twenty Six only (Rs.89,00,426/-) [wrongly recorded as Rs.98,00,426/- in the impugned notice], in the registry within week's time, the operation of the impugned communication No.JMC/RB/1215-16 dated 23.02.2016 issued by Respondent No.2 shall remain in abeyance. In case the amount is deposited same be kept in fix deposit initially for a period of three months."

14. We find that at the time of disposal of the writ petition vide impugned order dated 19th February, 2018, the learned Single Judge directed that the amount deposited by the appellant in the Registry shall be released in favour of the respondents. This amount was the subject matter of interim order dated 9th March, 2018 passed in the present proceedings whereby it was directed as follows:-

"In the meanwhile, the amount which had earlier been deposited by the petitioner before the Registrar Judicial of this Court and which has been released pursuant to the impugned order dated 19.02.2018 shall be kept separately and available to await further direction from this Court."

15. Mr. Grover, learned counsel for the appellant, further submits that so far as applications seeking initiation of contempt proceedings and initiation of proceedings for perjury are concerned, the same could not have been disposed of in view of the fact that the contempt as well as perjury which were alleged against the respondents were glaring at the face of the record.

16. It is submitted by Mr. Sachin Gupta, learned counsel for the respondents that no case for contempt as well as perjury was made out, therefore, the learned Single Judge rightly refused to proceed in the matter. It is further submitted that the order closing the contempt and the perjury proceedings are not appealable by way of letters patent.

17. We are not commenting on the submissions regarding contempt and perjury by way of present order.

18. In view of the above, this appeal is disposed of in the following manner:-

i) The challenge to order dated 19th February, 2018 passed in OWP No.362/2016 is hereby dismissed.

ii) It shall be open to the appellant to invoke such remedy as provided under the Jammu and Kashmir Arbitration and Conciliation Act, 1997 for reference of the disputes to the arbitration.

iii) Interim order dated 9th March, 2018 shall continue for a period of three

moths from today.

iv) So far as the payment of interest on the amount, if any, payable to the appellant is concerned, the same shall abide by directions in this regard in the award which may be passed in arbitration proceedings, if any.

v) It shall be open to the appellant to seek revival of contempt proceedings and/or perjury proceedings, which have been disposed of vide order dated 19th February, 2018. In case application(s) in this regard is/are made, the same shall be considered by the learned Single Judge in accordance with law.

vi) Nothing herein contained shall be considered an expression of opinion on the merits of the rival contentions.

The appeal along with application are disposed of in the above terms.