Serial No. 180

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP (C) No. 168/2023

Reserved on: 21.07.2026.
Pronounced o: 03.08.2026.
Uploaded on: 03 .08.2026.

M/S Construction Engineer,
54- Industrial Estate Barzulla, Srinagar.
Through its Attorney Holder,
Mohd Hussain Malik, S/o Ghulam Mohd
R/o Matto Colony Trikuta Nagar Extension
Jammu.

…. Appellant(s)/Petitioner(s)

Through: Mr. D.C. Raina, Sr. Advocate with
Mr. Anuj Dewan Raina, Advocate.
Mr. Mohd Junid, Advocate.

V/s

01. Sher-e-Kashmir University of
Agricultural Sciences & Technology, Jammu.
SKUAST-J.
Through its Registrar.

02. Estate Officer
Agricultural Sciences & Technology, Jammu.
SKUAST-J.

03. Comptroller,
Agricultural Sciences & Technology, Jammu.
SKUAST-J.
Main Campus Chatha, Jammu.

..…. Respondent(s)

Through: Mr. Anil Khajuria, Advocate.

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

JUDGMENT

01. The petitioner was earlier awarded the work, namely, ***"Construction of Boys Hostel Building (G+1) along with associated sanitary and***

internal electrification work of FOA, Main Campus, District Jammu." *A*ccording to the petitioner, despite having executed the work in terms of the contract, the respondents failed to release the payments due to him. Aggrieved by the non-payment and claiming interest on the delayed release of dues, the petitioner was constrained to invoke the jurisdiction of this Court under Section 11(6) of the Jammu and Kashmir Arbitration and Conciliation Act, 1997. The said petition was allowed by this Court vide order dated 20.12.2013, pursuant whereof an Arbitrator was appointed. The learned Arbitrator rendered an award dated 31.10.2016, whereby price escalation and interest were awarded in favour of the petitioner. The respondents challenged the said arbitral award by filing an application for setting aside the award before the learned Principal District Judge, Jammu; however, the said application came to be dismissed.

02. It is further submitted that thereafter the petitioner served a legal notice dated 01.09.2020 upon the respondents calling upon them to release the earnest money amounting to Rs. 11,00,000/-**,** the performance security of Rs. 18,00,000/-**,** and the bill deposit pertaining to the aforesaid work. Since the year 2021, the petitioner has been repeatedly pursuing the respondents for the release of the aforesaid amounts, which continue to be unjustifiably withheld. Finding no response from the respondents, the petitioner has been constrained to seek writ of mandamus against respondents.

03. The respondents, on the other hand, have resisted the writ petition by contending that the aforesaid amounts have been withheld on account

of disputes that had arisen between the parties, which formed the subject matter of the arbitral proceedings. According to the respondents, although the petitioner succeeded before the learned Arbitrator as well as before the learned Principal District Judge, Jammu, the arbitral award has been challenged before this Court and the matter is presently sub judice. It is, therefore, contended that the release of the earnest money, performance security and bill deposit at this stage would be premature.

04. The respondents have further objected to the maintainability of the writ petition on the ground that while raising his claims before the learned Arbitrator, the petitioner had also sought refund of the security deposit. It is further submitted that the Arbitration and Conciliation Act provides a complete and comprehensive mechanism for adjudication of disputes and enforcement of arbitral awards, and, therefore, the present writ petition amounts to an attempt to bypass the statutory remedy available under the said Act. The respondents further contend that, having admitted before the learned Arbitrator that the claim included refund of the earnest money and bill deposit, the petitioner is precluded from re-agitating the same issue by way of the present writ proceedings.

05. Learned counsel for the petitioner argued that the contract amount had already been paid to the petitioner during the financial year 2011–2012 and that the only amount remaining payable was the interest on the delayed payment, which constituted the sole dispute requiring adjudication before the learned Arbitrator. It was submitted that the

respondents themselves had contended before the Arbitrator that, since the principal amount had been paid in full, the petitioner's claim for interest was not maintainable. Thus, according to the petitioner, the only issue that fell for consideration before the Arbitrator was whether the petitioner was legally entitled to interest on the delayed payment of the principal amount. The learned Arbitrator answered the issue in favour of the petitioner by holding that the petitioner was entitled to interest on the delayed payment and passed the award accordingly.

06. It was further submitted that the arbitral proceedings were confined exclusively to the petitioner's claim for interest and that, under the award, the petitioner had been granted interest, including interest upon interest, calculated up to 31.10.2016. Learned counsel contended that the earnest money deposit of ₹11 lakh, the performance security of ₹18 lakh, and the bill deposit were never the subject matter of the arbitration proceedings. Had those amounts been in dispute, the respondents would have specifically contested those claims before the learned Arbitrator as well.

07. Responding to the objections raised by the respondents under Order II Rule II of the Code of Civil Procedure, learned counsel for the petitioner submitted that the said provision had no application to the facts and circumstances of the present case.

08. Inviting the attention of the Court to the stand taken by the respondents before the High Court in the earlier proceedings, learned counsel argued that the respondents had never disputed the petitioner's

entitlement to payment for the work executed. On the contrary, their stand was that no arbitrable dispute existed between the parties warranting the appointment of an Arbitrator, as the dispute projected by the petitioner was allegedly not covered by the arbitration agreement. It was further pointed out that the University itself had taken up the matter with the Government for early submission of the requisite report and release of the outstanding payment.

09. In support of the petition, learned counsel placed reliance upon the judgment of the Supreme Court in *Union of India & Ors. v. Bali Ram*, reported as **2026 INS 689**. It was argued that the petitioner was legally entitled to the amounts in question, which had been unjustifiably withheld by the respondents despite there being no counterclaim alleging defective or incomplete execution of the work. According to the petitioner, the respondents were seeking to deny the release of the admitted amounts by raising purely technical objections. It was, therefore, submitted that this Court, in exercise of its writ jurisdiction, ought to render substantial justice by directing the release of the amounts wrongfully withheld, particularly when there was no material on record to suggest that the petitioner had committed any procedural breach disentitling it to such relief.

10. *Per contra*, learned counsel appearing for the respondents contended that, once the petitioner had invoked the arbitration clause and pursued its claims before the learned Arbitrator, it was incumbent upon the petitioner to claim all reliefs to which it considered itself entitled, including the refund of the performance security and earnest

money. Having consciously omitted to seek such reliefs in the arbitral proceedings, the petitioner was now estopped from raising those claims by invoking the writ jurisdiction of this Court. It was further submitted that the present claim was barred by the principles of *res judicata* and was also hit by the provisions of Order II Rule II of the Code of Civil Procedure.

11. Heard counsels for the parties and have gone through record.

12. A contract entered into between the parties is required to be performed in accordance with its terms, and the reciprocal contractual obligations are to be discharged in the manner contemplated by law. Once the contractual obligations stand duly performed, the corresponding liability to make payment arises. Where the contract amount is not paid within the stipulated time, the delay in payment gives rise to a claim for interest. In the present case, the dispute that was referred to arbitration pertained solely to the petitioner's claim for interest on account of delayed payment. The pleadings reveal that the petitioner had been awarded the contract for the construction of the ***"Boys Hostel Building (G+1) along with associated sanitary and internal electrification works at FOA, Main Campus, District Jammu."*** Upon completion of the work, allegations surfaced that the then Vice-Chancellor had committed certain irregularities by creating liabilities to the tune of ₹28.44 crores and by executing a majority of the works during his tenure without obtaining the requisite technical sanction, allegedly amounting to an abuse of power. Consequently, the Government constituted a Committee to inquire into the matter, and

the respondent-University took the stand that it would furnish all necessary information to the said Committee.

13. As the petitioner had completed the contractual work but was not paid the amounts due within time, he was constrained to invoke the jurisdiction of this Court by filing an application under Section 11(6) of the Arbitration and Conciliation Act, seeking the appointment of an Arbitrator. The application was allowed, and an Arbitrator was appointed to adjudicate the disputes between the parties.

14. Before the learned Arbitrator, the petitioner claimed interest on the payments received on different dates in respect of Item Nos. I, II, III and V of the contract. The respondent-University, on the other hand, raised a counterclaim alleging that the petitioner had abandoned the construction of the boys' hostel along with its allied works despite having received the mobilisation advance, thereby causing substantial financial loss to the University.

15. During the arbitral proceedings, the respondent-University asserted that the principal contractual amount had already been paid and placed on record the details of the payments made to the petitioner. In view of the admitted payment of the principal amount, the learned Arbitrator confined the adjudication to the issue of interest and held that the petitioner was entitled to interest on the delayed payments, consequently passing an award directing payment of interest on the admitted liability. The respondents challenged the arbitral award before the District Court under Section 34 of the Arbitration and Conciliation Act; however, the challenge was dismissed. Aggrieved

thereof, the respondents have preferred separate proceedings before this Court, which are presently pending adjudication. Through the present writ petition, the petitioner seeks the release of the earnest money deposit of ₹11 lakh and the performance security of ₹18 lakh, contending that the said amounts have been unlawfully withheld by the respondents despite repeated requests and the issuance of a legal notice. According to the petitioner, since the contractual work stands completed and the respondents have admitted their liability under the contract, the only dispute between the parties pertains to the quantum of interest awarded on account of delayed payment. The respondents, however, object to the maintainability of the writ petition on the ground that the contractual disputes are already the subject matter of arbitral proceedings and the pending challenge before this Court.

16. The aforesaid objection, prima facie, does not appear to have any legal merit. Once a party has duly performed its contractual obligations and the employer has acknowledged such performance without raising any subsisting claim regarding breach or defective execution, it cannot subsequently contend that the performance security or earnest money may continue to be withheld or forfeited to secure any possible future liability. An employer who has accepted satisfactory completion of the contract is under a legal obligation to refund the security deposit in accordance with the terms of the contract and cannot indefinitely retain the same in the absence of any enforceable claim. This principle is well settled and finds support from a consistent line of judicial precedents rendered by the constitutional courts.

17. In *Maula Bux v. Union of India*, reported as **AIR 1970 SC 1955**, the Supreme Court explained the nature of earnest money, holding that it is a deposit made by the purchaser to be adjusted towards the sale consideration upon completion of the contract and, until then, serves as evidence of the purchaser's intention to perform the contract. It was held that the forfeiture of a reasonable amount of earnest money under a contract for sale of property does not ordinarily attract the provisions of Section 74 of the Indian Contract Act. The Court further observed that the expression "whether or not actual damage or loss is proved to have been caused thereby" occurring in Section 74 is intended to cover different classes of contracts. In certain cases, the loss occasioned by breach may be incapable of precise assessment, whereas in others it may be readily ascertainable. In the facts of that case, the contract empowered the Government to recover from the contractor any additional expenditure incurred in procuring the supplies or services agreed to be furnished under the contract. However, the Trial Court found that the Government of India had failed to adduce any evidence to establish that it had suffered any loss on account of the plaintiff's alleged default and, consequently, held that the security deposit was not liable to be forfeited. Although the High Court observed that the contractual terms permitted forfeiture of the security deposit upon the contractor's failure to perform his obligations, it was also noticed that, despite having ample opportunity, the Government had failed to prove either the alleged breach or the loss suffered by it. The Supreme Court declined the Government's

request for a further opportunity to lead evidence regarding the alleged loss and, while modifying the High Court's direction relating to interest, upheld the contractor's entitlement to the refund of the performance security, directing the Union of India to release the same.

18. In *Union of India v. Rampur Distillery and Chemical Co.*, reported as **AIR 1973 SC 1098**, the Supreme Court considered the issue of forfeiture of a security deposit furnished to ensure due performance of a contract. The Court observed that the security deposit had been furnished solely as a guarantee for the proper performance of the contractual obligations and that, in the event of a default, the contract contemplated forfeiture of the deposit. However, as the appellants had failed to establish that they had suffered any loss or damage on account of the alleged breach committed by the respondents, the Supreme Court held that the security deposit could not be treated as earnest money so as to justify its forfeiture. Following the principles laid down in *Maula Bux v. Union of India*, the Court rejected the appellants' claim to forfeit the security deposit in the absence of proof of any loss suffered by them.

19. Similarly, in *Bharat Sanchar Nigam Limited v. Teracom Limited* [O.M.P. (COMM) 431/2019 & I.A. No. 14326/2019], the Delhi High Court, while dealing with a similar issue, held that there was no justification for BSNL to forfeit or retain any amount recovered against the performance bank guarantee in the absence of any claim alleging failure on the part of the contractor to perform its contractual obligations. The Court observed that, once BSNL had acknowledged

due performance of the contract and had not asserted any subsisting claim for breach or damages, there existed no legal principle that would entitle it to continue retaining the performance security. Accordingly, it was held that the employer was under an obligation to release the performance security after accepting satisfactory completion of the contractual work.

20. In the present case, the respondents, in their objections, have unequivocally admitted that at no point of time did they dispute the satisfactory execution of the contract by the petitioner. In fact, the stand now advanced by the learned counsel for the respondents is contrary to the consistent position adopted by the University throughout the arbitral proceedings and the earlier litigation. During the course of hearing, learned counsel for the petitioner invited the attention of the Court to the objections filed by the University in the proceedings instituted by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, wherein it was specifically pleaded that the Works Committee of the University, in its meeting held on 11.02.2010, had resolved to release 60% of the work-done liabilities, subject to fulfilment of the requisite codal formalities. The University had, in fact, maintained that no dispute existed between the parties warranting reference to arbitration and had opposed the appointment of an Arbitrator on the ground that the existence of an arbitrable dispute is a condition precedent for invoking Section 11 of the Act. The respondents had further pleaded, particularly in paragraph 12 of their objections, that no dispute subsisted between the parties and that

the University had already approached the Government for the early submission of the report of the Committee constituted to examine the liabilities incurred during the tenure of the then Vice-Chancellor. According to the University, in the absence of the said report, it was unable to release the remaining payments and, therefore, the request for appointment of an Arbitrator was premature.

21. The aforesaid stand of the University clearly demonstrates that, insofar as the contractual dues were concerned, the respondents never disputed their liability and intended to discharge the contractual obligations upon completion of the requisite formalities. The only issue that ultimately came to be referred to arbitration related to the petitioner's claim for interest on account of delayed payment, and the award rendered thereon is admittedly the subject matter of separate proceedings pending before this Court. The question, therefore, that falls for consideration in the present petition is whether the petitioner can be deprived of the refund of the earnest money and performance security, which continue to remain with the respondents despite there being no allegation of breach of contract or unsatisfactory execution of work on the part of the petitioner.

22. Mr. Anil Khajuria, learned counsel appearing for the respondents, argued that the counterclaim raised by the University in the arbitral proceedings is still pending adjudication in the challenge proceedings and that any liability which may ultimately be fastened upon the petitioner could be satisfied out of the earnest money and performance security lying with the University. It was, therefore, contended that the

respondents possess a lien over the said amounts and are justified in withholding their release. The said contention was refuted by the learned counsel for the petitioner, who submitted that once the contractual work stands completed and the respondents themselves have admitted the contractual liability, there exists no legal justification for retaining the earnest money or performance security. It was further submitted that, even assuming the respondents' contention to be correct, the petitioner is willing to furnish an undertaking that any liability which may hereafter be determined against him shall be duly discharged in accordance with law.

23. The respondents further contended that the relief sought in the present writ petition is barred by the provisions of Order II Rule II of the Code of Civil Procedure, inasmuch as the petitioner, while pursuing the arbitral proceedings, did not seek refund of the earnest money and performance security. Although the submission appears attractive at first blush, it cannot withstand judicial scrutiny in the factual matrix of the present case. Once the contract had been fully performed and the respondents had accepted the completion of the work without alleging any breach or deficiency, the petitioner's reference to arbitration was confined solely to his claim for interest on delayed payment of the admitted contractual dues. The petitioner had no occasion to seek refund of the earnest money and performance security before the Arbitrator, particularly when the respondents themselves had consistently maintained that no dispute existed which was capable of being referred to arbitration. Having adopted such a stand, the

respondents cannot now be permitted to contend that the petitioner ought to have included the relief of refund of the security deposits in the arbitral proceedings. A party which admits due performance of the contract and raises no claim for breach cannot assert any lien over the contractor's security deposit merely on the speculative ground that some liability may arise in future. Such retention is contrary to the contractual relationship between the parties and cannot be sustained in law. Even otherwise, the petitioner has invoked the extraordinary jurisdiction of this Court seeking a writ of mandamus for enforcement of an undisputed legal right, namely, the refund of amounts which the respondents are under a legal obligation to release. The bar contained in Order II Rule II CPC, therefore, has no application to the facts of the present case.

24. The reliance placed by the respondents on the judgment of the Supreme Court in *Devilal Modi v. Sales Tax Officer, Ratlam & Ors.*, **AIR 1965 SC 1150**, is wholly misconceived. Learned counsel for the respondents has been unable to demonstrate how the principles laid down in the said decision are attracted to the facts of the present case. The reliance is, therefore, misplaced and does not advance the case of the respondents.

25. The respondents cannot be permitted to take refuge behind procedural or technical objections in order to evade their legal obligation to refund the earnest money and performance security. In the absence of any order of forfeiture founded upon breach of contract or proof of loss, the continued retention of the petitioner's money is wholly

arbitrary and contrary to the settled principles governing contractual obligations. As noticed hereinabove, such forfeiture cannot be sustained in law.

26. For all the foregoing reasons, the objections raised by the respondents are devoid of merit and deserve to be rejected. This Court is persuaded, particularly in the light of the principles enunciated by the apex court in *Union of India & Ors. v. Bali Ram*, (supra) to exercise its writ jurisdiction and compel the respondents to perform their contractual obligation by refunding the earnest money and performance security to the petitioner.

27. Accordingly, the writ petition is allowed. A writ of mandamus is issued directing the respondents–University to forthwith release the earnest money amounting to ₹11,00,000/- and the performance security amounting to ₹18,00,000/- in favour of the petitioner. However, having regard to the facts and circumstances of the case, the aforesaid amounts shall not carry any further interest.

28. The writ petition is, accordingly, ***disposed of,*** along with all connected application(s).

(Sanjay Parihar)
Judge

Jammu
03.08.2026
Renu

Whether the judgment is speaking: Yes

Whether the judgment is reportable: Yes