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Regular

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CM(M) 182/2022
c/w i)CCP(S) 378/2024

MOHAMMAD ASHRAF LONE ….. Petitioner(s)

Through: Mr. Sami Lone, Adv.
vice Mr. Syed Sajad Geelani, Adv.

V/s

PARVAIZ AHMAD YATOO AND ORS. ….. Respondent(s)

Through: Mr. Waseem Shamas, Adv.

Coram:

Hon'ble Mr. Justice Rajnesh Oswal, Judge

ORDER
14.10.2026

CM(M) No. 182/2022:

1. The court of learned Judicial Magistrate 1st Class (Munsiff), Dangiwacha (for short the "trial court") in terms of order dated 12.08.2022, besides referring the parties to arbitration, has also appointed Fruit Association at Fruit Mandi, Sopore as an Arbitrator.
2. The petitioner, had filed the suit for rendition of accounts and permanent injunction against the respondents by asserting that he was dealing and carrying on apple fruit business whereas Respondent Nos. 1 and 2 are Fruit Merchants and

Commission Agents, residents of Village Nowpora Kalan, Rafiabad, having fruit business at Fruit Mandi, Sopore under the name and style "Vikas Fruit Company", Shop No. 04 and Fud No. 4A. The petitioner claimed to have supplied and dispatched in the year 2017 more than 400 apple fruit boxes to Respondent Nos. 1 and 2 of various varieties such as Delicious, American, Razaqwari etc. Besides, the above mentioned supplies, the petitioner also claimed to have made more supplies to the respondent Nos. 1 and 2 during different periods as narrated in the plaint.

3. The petitioner demanded the sale proceeds but the respondents avoided the same, and thereafter filed the suit. The petitioner in support of his claim relied upon various invoices. Respondents in turn filed application under Section 8 of the Arbitration and Conciliation Act, for referring the dispute to the Arbitrator by asserting that the petitioner had executed the agreement with them for various orders regarding the product supplied by the petitioner to them. The said application was opposed by the petitioner by asserting that the President/Chairman of Traders and Growers Association has been impleaded as party, therefore the mater

cannot be referred to the arbitration. The learned trial court in terms of order dated 12.08.2022 referred the contesting parties to the arbitration and appointed defendant No. 3 as an Arbitrator.

4. Heard learned counsel for the parties and perused the record.
5. Learned counsel for the petitioner submits that there was no arbitration agreement between the parties, however this plea was never raised before the learned trial court. The petitioner is left free to raise this plea during arbitration. Learned counsel has further argued that the trial court ought not to have appointed defendant No. 3 as an Arbitrator and further no direction to defendant No. 3 could have been issued to file an undertaking. There is substance in the submission made by the learned counsel for the petitioner and it is conceded by the learned counsel for the respondents that the direction regarding appointment of arbitrator and furnishing of an undertaking ought not to have been issued and he further submits that the same be deleted.
6. In view of the above, order dated 12.08.2022 is modified to the extent of deletion of direction regarding appointment of Fruit Association at Fruit Mandi, Sopore as an Arbitrator in

the present case and furnishing of undertaking. The parties shall proceed in accordance with the agreement and in terms of Arbitration and Conciliation Act, 1996. The contention of the petitioner that there was no arbitration agreement is left open to be raised before the learned Arbitrator.

7. Disposed of as above.

CCP(S) No. 378/2024:

8. With the disposal of the main petition as above, the proceedings against the respondents are dropped and the contempt petition is accordingly disposed of.

(Rajnesh Oswal)
Judge

SRINAGAR
14.10.2026
Aasif

Whether the order is speaking Yes/No

Whether the order is reportable Yes/No