

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT**

Ch. Muhammad Ibrahim Zia, C.J.  
Raja Saeed Akram Khan, J.

Civil Appeal No. 41 of 2016  
(PLA filed on 04.02.2016)

Matracon Pakistan (Pvt) Limited through Muhammad Abdul Qadr, CEO/Managing Director having office at House No. 276-B, Main Double road, Sector F-10/4, Islamabad.

.... APPELLANT

VERSUS

1. Azad Government of State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad.
2. Department of Health through its Secretary, Government of Azad Jammu and Kashmir, Muzaffarabad.
3. KFW Bank through Country Director Wolf Gang Muller having office at House No.23, Street No. 55, Sector F-7/4, Islamabad.
4. Amjid Saeed, Senior Project Engineer/Project Manager, District Hospital Bagh, Azad Kashmir.

..... RESPONDENTS

(On appeal from the Judgment of the High Court dated 03.12.2015 in Revision Petition No. 234/2015)

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FOR THE APPELLANT: Barrister Hamayun  
Nawaz Khan, Advocate.

FOR THE RESPONDENTS: Raja Ikhlaq Hussain  
Kiani, Addl. Advocate-  
General.

Date of hearing: 07.03.2017

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.—** The captioned appeal by leave of the Court arises out of the judgment of the High Court dated 03.12.2015 whereby the revision petition filed by the appellant, herein, has been dismissed.

2. The controversy in this lis relates to Construction of District Headquarter Hospital Bagh. According to the relevant facts, the appellant-company is having its Head Office at Islamabad. The respondents invited bids for construction of DHQ Hospital Bagh. The appellant-company participated in the bidding process. The total amount of project was

fixed as Rs. 672318542/-. The appellant-company after completion of bidding process was declared as successful bidder and the contract was awarded on 02.10.2009. The tenure for completion of the project was fixed as 31.01.2014. An agreement was also signed on 05.11.2009 between the parties regarding the terms of contract. The Bank guarantees in the sum of Rs. 67231854/- and Rs. 161530667/- were submitted by the petitioner on 12.3.2010. After completion of required process, the appellant-company started construction work. The amount of both the Bank guarantees was later on reduced. The appellant-company has alleged that due to non-release of funds in due time by the official-respondents, the construction work delayed. The extension of contract had been granted from time to time by the respondents. The appellant-company also alleged that the escalation compensation was also claimed due to abnormal increase and hike in the prices but the same has also not been allowed. The appellant-company has raised many other grounds in support of the alleged claim. The appellant's main

claim is that 80% construction work has been completed whereas the remaining will be completed within a period of 6 months but the respondents are bent upon to allot the remaining construction work with mala-fide to some other firms to extend undue benefits. The defendant-respondents issued notice to the appellant-company on 27.05.2015 against which the appellant-company invoked jurisdiction of Civil Court through a declaratory suit along with the application for interim injunction. During the course of arguments it was brought into notice of the Court that the appellant's contract has been cancelled. The defendant-respondents filed objections. The application for interim injunction was dismissed vide order dated 28.5.2015. The appellant-company challenged the order of trial Court dated 28.5.2015 through an appeal before the District Judge which was dismissed. The appellant-company approached the High Court through a revision petition. The High Court also concurred with the findings recorded by the Courts below and dismissed the revision petition

filed by the appellant-company, hence this appeal by leave of the Court.

3. Barrister Humayun Nawaz Khan, Advocate, the learned counsel for the appellant after narration of necessary facts seriously objected to the impugned judgment of the High Court on the ground that the same is telegraphic one and passed without application of judicial mind and appreciation of the record. The main reason advanced for dismissal of the revision petition is the failure of the appellant to challenge the contract termination order, whereas, the same was challenged through an amendment application but the fact has not been considered. He also submitted that the construction material of the appellant in huge quantity was lying on the spot which has been misused by the respondents. The petitioner deserves for protection of his valuable rights. For consideration of all these propositions, while accepting this appeal and setting-aside the impugned judgment the prayed interim relief be granted.

4. Raja Ikhlaq Hussain Kiani, Additional Advocate-General the learned counsel for the respondents submitted that the impugned judgment of the High Court is quite legal one. The question of amendment, if at all has any substance, has to be determined by the trial Court. The same cannot be resolved by this Court at this stage of the litigation. He further submitted that as this Court has not granted any interim relief at the time of granting leave, thus, at this stage there is no valid ground or justification for grant of interim relief. This appeal has no substance and the same is liable to be dismissed with costs.

5. We have considered the arguments of the learned counsel for the parties and examined the record made available. Without detailed discussion on the merits of the case and the points argued, admittedly, during pendency of the suit before the trial Court the contract was terminated and the plaintiff-appellant filed an application for amendment of the plaint to seek remedy against the contract termination order which is still awaiting disposal

before the trial Court. In this state of affairs, the proper course is disposal of the amendment application by the trial Court. The High Court has rightly advised the appellant that after filing the amended suit, he may file fresh application for interim relief.

In view of the above stated reasons, the trial Court is directed to expeditiously dispose of the amendment application and other issues after hearing the parties. No further proceeding in this appeal is required, therefore, the same stands disposed of with no order as to costs.

Muzaffarabad,  
\_\_\_ .03.2017

CHIEF JUSTICE

JUDGE

Date of announcement: 07-03-2017