

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 64 of 2015

1. Charanjit Chhabra Partner Firm Malik Ram Jagar Ram, Gole Bazar, Bilaspur, Chhattisgarh
2. Satish Kumar Chhabara, Aged About 37 Years, S/o Late Tilak Raj Chhabra

2(a) Sanjay Kumar Chhabara, Aged About 35 Years, S/o Late Tilak Raj Chhabra

2(b) Smt. Rashmi Chhabra W/o Late Rajnish Kumar Chhabra, Aged About 40 years,

2(c) Karan Kumar Chhabara, S/o Late Tilak Raj Chhabra

All resident of Oppt. Jagat Agencies, Telipara, Bilaspur (Chhattisgarh).

3. Rajendra Kumar Chhabra Partner, Firm Malik Ram Jagar Ram, Gole Bazar, Bilaspur (Chhattisgarh)

---- **Petitioners**

Versus

Om Prakash Chhabra Partner, Firm Malik Ram Jagar Ram Chhabra, Aged About 74 Years, R/o Plot No. 71, Green Park, Bilaspur 495001 (Chhattisgarh).

---- **Respondent**

For Petitioners	:	Shri Prafull N. Bharat and Shri Ashish Shrivastava, Advocates.
For Respondent.	:	Shri K.R. Nair, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

31/07/2015

1. IA No.1, application for condonation of delay in filing this review petition is allowed and consequently delay is condoned.
2. Instant review petition has been filed seeking review of order dated 24.04.2015 passed by this court in MCC No.306 of 2015. The said MCC

was filed seeking modification of the earlier order dated 08.01.2015 passed in Arbitration Application No.07 of 2010 filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short, the Act, 1996) for appointment of Arbitrator to redress the disputes raised by the parties.

3. Since the sole Arbitrator earlier appointed by this court by order dated 08.01.2015 expressed his inability, the said MCC was filed seeking for change of Arbitrator. This court distinctly remembers in the said MCC of having instructed the counsel for the applicant therein to seek consent of the counsel appearing for the opposite side for appointment of Arbitrator i.e. Justice S.K. Tiwari (Retired Judge of Calcutta High Court).
4. Counsel for the applicant in the said MCC made a statement before the court that he had spoken to the counsel for opposite side (applicant herein) and who has given his consent for appointment of Justice S.K. Tiwari (Retired Judge of Calcutta High Court) as new Arbitrator and had also deputed his junior colleague to represent in the case and accordingly order dated 24.04.2015 was passed appointing the new Arbitrator. Just because the name of the counsel for respondent is not reflected with order by itself cannot be construed to be a case where the counsel has not been taken into confidence before the order was passed on 24.04.2015.
5. The present review petition has been filed by the applicant herein only on the ground that consent had not been given by them and the statement made by the counsel for applicant in the said MCC is not correct.
6. Without entering into the merits of the averment made in the review petition, this court is not inclined to review the order dated 24.04.2015 on two grounds, firstly; once when this court has exercised its power under Section 11(5) of the Act, 1996, this court become functus officio and from

the record it appears that Arbitrator appears to have seized of the matter and has started the arbitration proceedings and this court would not have any power for review its order dated 24.04.2015. Secondly; the grounds raised by the applicant in the instant review petition also do not appear to be a good ground sufficient for reviewing the order which has been passed with the consent of both the parties as is evident from para 3 & 4 of the impugned order.

7. For the reasons mentioned hereinabove, the review petition is dismissed.

Sd/-
(P.Sam Koshy)
Judge