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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.752 OF 2014

1. Neeta Lalit Sanghavi ,
Age 45 years, occupation Advocate,
2. Hemanshu Lalit Sanghavi,
Age 44 years, Occupation Service,

Both adult Indian Inhabitants, legal heirs of Mr.Lalitkumar Vanmalidas Sanghavi (now deceased), having their address at 101, Vallabh Bhuvan, 20 Bapubhai Vashi Road, Vile Parle (W), Mumbai 400 045.

...Petitioners

...Versus...

1. Dharamdas Vanmalidas Sanghavi,
Age 83 years, Occupation None, an adult, Indian Inhabitant, having his address at 312, Vallabh Bhuvan, 20 Babubhai Vashi Road, Vile Parle (W), Bombay - 400 056.
2. Paresh Daulatrai Sanghavi,
Age 46 (approximately), occupation Business, an adult, Indian Inhabitant, having his address at Flat No.52, 5th Floor, Ustav Building, Podar Road, Santacruz (W), Bombay – 400 054.
3. Manish Daulatrai Sanghavi,
Age 43 years (approximately), occupation Business, an adult, Indian Inhabitant, having his address at B-52, Glad Hurst Building, P.M. Road, Santacruz (W), Bombay – 54.

4. Kalpana Rakesh Dalal,
Age 47 years (approximately),
occupation Home-maker,
an adult, Indian Inhabitant,
having her address at 6,
Jolly Centre, 2nd Floor,
Tilak Road, Santacruz (W),
Bombay – 400 054.

...Respondents

Mr.Snehal Shah i/b Mr.Yatin Shah for the Petitioners.

Mr.K.P. Anilkumar for Respondent No.1.

Mr.Satyan Vaishnava with Ms.Nupur Mukharjee i/b N.N. Vaishnava &
Co. for Respondent No.2.

Mr.J.P. Sen, Senior Counsel i/b Mr.Rakesh Dave for Respondent
Nos.3 and 4.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 31ST JULY, 2015
PRONOUNCED ON : 12TH AUGUST, 2015.

JUDGMENT :-

1. By this petition filed under sections 9 and 14 of the Arbitration & Conciliation Act, 1996 (for short “the Arbitration Act”) the petitioners seek condonation of delay in filing the present petition and have prayed for setting aside the termination of the proceedings by the arbitral tribunal contained in the impugned award dated 29th October, 2007 and have prayed for constitution of the arbitral tribunal as per the arbitration agreement contained in the Deed of Partnership dated 20th October, 1962. The petitioners have also prayed for continuation of the order dated 31st October, 2002 passed by this Court in Arbitration Petition No.470 of 2002, appointing the Court Receiver, High Court, Bombay of all the partnership assets, including

the properties particularly described in Exhibit "A" to the petition and for other reliefs. Some of the relevant facts for the purpose of deciding this petition are as under :

2. The father of the petitioners Mr.Lalitkumar V. Sanghavi, the respondent no.1, Mr.Daulatrai Sanghavi and Mr.Harkisandas Sanghavi were sons of Mr.Vanmalidas and Mrs.Triveniben Sanghavi. Late Lalitkumar Sanghavi, the respondent no.1, Mr.Harkisandas Sanghavi and said Mr.Daulatrai Sanghavi constituted a partnership firm in the name and style of M/s.Sanghavi Brothers on 20th October, 1962 for the purpose of carrying on business *inter-alia* of taking on lease a plot of land bearing plot no.240, Town Planning Scheme-II, Vile Parle, admeasuring 3430 sq. yards and constructing the building thereon. In clause 14 of the said partnership deed, it was provided that the death of any of the parties thereto shall not dissolve the partnership as to the other partners and the share of the deceased partner shall be continued in the partnership. Clause 15 of the said partnership deed provided for arbitration of a single arbitrator to be nominated by the parties in case the parties agree upon one, otherwise two arbitrators, one appointed by each parties to the partnership deed in accordance with and subject to the provisions of the Indian Arbitration Act or any statutory modification thereof. The said partnership deed was duly registered.

3. It was the case of the petitioners that late Mr.Lalitkumar V. Sanghavi and late Mr.Daulatrai V. Sanghavi had contributed the amounts towards initial capital of the said firm and neither the respondent no.1 nor the said Mr.Harkisandas Sanghavi contributed any amount towards the initial capital of the said firm. It was also the case of the petitioners that the said Mrs.Triveniben Sanghavi and

Mr.Vanmalidas Sanghavi were the then joint owners and absolutely entitled to the subject property / plot of the structure standing thereon. By a Deed of Indenture dated 19th February, 1963, the said firm acquired the subject property and structure standing thereon on leasehold basis for a term of 50 years from 19th February, 1963 upon the terms and conditions recorded in the said deed.

4. On 17th September, 1964, Mr.Harkisandas Sanghavi retired from the said firm. On 25th June, 2000, Mr.Daulatrai Sanghavi expired. Respondent Nos.2 and 3 are the sons of Mr.Daulatrai Sanghavi. Respondent no.4 is the daughter of late Mr.Daulatrai Sanghavi. On 7th October, 2012, Mr.Lalitkumar Sanghavi expired. The petitioners are the heirs and legal representatives of the said late Mr.Lalitkumar Sanghavi.

5. On 17th September, 1964, Mr.Harkisandas Sanghavi retired from the said firm. Late Mr.Lalitkumar Sanghavi, the respondent no.1 and late Mr.Daulatrai Sanghavi continued to be partners of the said firm. It is the case of the petitioners that Mr.Harkisandas Sanghavi released and relinquished all his rights, title and interest in the said firm and the assets of the said firm, including the leasehold rights in the subject property and structures standing thereon. On 18th January, 1969 Mr.Vanmalidas Sanghavi expired. It was the case of the petitioners that the said Mrs.Triveniben Sanghavi thus became the sole owner of the subject property. The said Mrs.Triveniben Sanghavi had initiated proceedings for administration of the estate of the late Mr.Triveniben Sanghavi by way of Testamentary Petition No.759 of 1969, which was converted into Suit No.7 of 1970. On 30th March, 1971, letters of administration was granted in favour of said Mrs.Triveniben Sanghavi. In the year 1972,

Mr.Harkisandas Sanghavi filed a suit in this Court which came to be disposed of by the orders dated 21st and 22nd June, 1999.

6. It was the case of the petitioners that some time in the year 1982, the late Mr.Lalitkumar Sanghavi (the predecessor of the petitioners) who was the original claimant came across an advertisement in the daily newspaper wherein it was stated that the respondent no.1 as a partner of the said firm had agreed to sell the right, title and interest in respect of the subject property to M/s.Om Builders. Mr.Lalitkumar Sanghavi raised an objection to the said proposed sale on the ground that the respondent no.1 had no authority to sell or to deal with or dispose of the said property. It was the case of the petitioners that the said Mrs.Triveniben Sanghavi as a landlady had called upon the respondent no.1 to pay the lease rent, tax etc. on behalf of the said firm and also objected to various illegal constructions made or at the instance of the respondent no.1. By her advocate's letter dated 27th September, 1999, the said Mrs.Triveniben Sanghavi terminated the lease deed on the ground that the said firm had not complied with the terms and conditions of the lease deed. The said Mrs.Triveniben Sanghavi thereafter filed a suit for eviction of the suit firm from the subject property. It is the case of the petitioners that the respondent no.1 had seriously jeopardized the plot of suit firm and did not pay the lease rent to the landlady, attempted to sell the rights of the said firm in the subject property, was illegally collecting the rents from the tenants, transferring the tenancy without consulting the other partners.

7. The said Mr.Lalitkumar Sanghavi by his advocate's letter dated 14th February, 2002, issued a notice of dissolution of the suit firm with effect from 14th February, 2002 and called upon the

respondent no.1 to render the particulars of the properties, assets, business and affairs of the suit firm and also invoked the arbitration agreement. Neither the respondent no.1, nor respondent nos.2 to 4 replied to the said letter dated 14th February, 2002. The respondent no.1 by his letter dated 22nd March, 2002, made various allegations against late Mr.Lalitkumar Sanghavi and contended that he was being expelled from the said firm.

8. Some time in the year 2002 the said Mr.Lalitkumar Sanghavi filed arbitration petition in this Court under section 9 of the Arbitration Act. By an order dated 31st October, 2002, this Court appointed the Court Receiver, High Court, Bombay as receiver of the properties and assets of the suit firm. The said order was confirmed in Appeal No.1014 of 2002 by the Division Bench of this Court on 11th December, 2002. Special Leave Petition was dismissed on 10th March, 2003. By an order dated 21st February, 2003 this Court constituted the arbitral tribunal in Arbitration Application (No.263 of 2003) filed by late Mr.Lalitkumar under section 11 of the Arbitration Act.

9. By a letter dated 5th September, 2003, the said late Mr.Lalitkumar Sanghavi through his advocate addressed a letter to the learned advocate representing the respondent no.1, requesting the respondent no.1 to furnish full address of Mr.Suresh Payak, who was nominated by the respondent no.1 to the presiding arbitrator to proceed with the arbitral proceedings.

10. On 8th October, 2003, the arbitral tribunal directed each of the partners i.e. the predecessor of the petitioners, the respondent no.1 and respondent nos.2 to 4 to file their respective statements of

claim on or before 28th November, 2003 and to exchange as between three groups by next date. Each of the parties were also directed to file their respective replies to those statements on or before 10th January, 2004 and hand over copy thereof to each other by the same day. The arbitral tribunal directed the parties to appear before the arbitral tribunal on 21st January, 2004 for further directions as may be necessary. The parties were directed to fix the venue of the meeting and directed each of the group to deposit a sum of Rs.10,000/- with each of the arbitrator within a period of four weeks from the date of the said order. It was made clear that further directions would be issued if necessary in due course about deposit.

11. On 21st October, 2003, the said Mr.Lalitkumar Sanghavi through his advocate forwarded three cheques to the respective members of the arbitral tribunal of Rs.10,000/- each as directed towards deposit.

12. On 24th October, 2003, the respondent no.1 addressed a letter to the presiding arbitrator and alleged that without consent of the respondent no.1 and at the instance of the said Mr.Lalitkumar Sanghavi, the dispute had been referred to the arbitral tribunal in respect of the said firm which did not have business from 1962 till the date of writing the said letter and did not have any income. The firm only had one property i.e. plot of land left behind by the deceased father Mr.Vanmalidas Sanghavi. His land was given to the suit firm on lease for a period of 50 years. It was contended that after the death of his father, all three brothers were equally entitled for the said plot of land as the owners. The respondent no.1 informed the learned presiding arbitrator that he was not in a position to pay the fees of the arbitral tribunal as he had no source of income. He submitted that

since the only property of the firm was to be divided equally amongst the brothers, there was no dispute which was required to be decided by the arbitral tribunal. The respondent no.1 requested the arbitral tribunal that no further arbitration proceedings should be continued and the same shall be dropped.

13. On 13th January, 2004, the said Mr.Lalitkumar Sanghavi filed the statement of claim before the arbitral tribunal *inter-alia* praying for a declaration that the said firm stood dissolved on and from 14th February, 2002 or from such other date as the arbitral tribunal deems fit and proper and also sought an appointment of the Court Receiver, for direction against the respondent no.1 to render accounts of the suit firm and for various other reliefs.

14. Learned advocate representing Mr.Lalitkumar Sanghavi, the predecessor of the petitioners, addressed a letter to the advocates representing the respondents on 20th January, 2004 informing that he had received telephonic call from the office of the presiding arbitrator on 19th January, 2004 postponing the meeting proposed to be held on 20th January, 2004 due to ill-health of one of the arbitral tribunal and informed that the next date of the meeting shall be communicated through the presiding arbitrator.

15. The learned presiding arbitrator addressed a letter on 21st January, 2004 to the advocates representing the parties recording that the arbitral tribunal had received the statement of claim of Mr.Lalitkumar Sanghavi through his advocates M/s.Vinod Mistry & Co. The other two groups had not filed any statement of claim till then. The arbitral tribunal also referred to a letter dated 24th October, 2003 from the respondent no.1 stating that there was no dispute

which was to be decided by the arbitral tribunal. Since the other two groups did not comply with the directions issued by the arbitral tribunal on 8th October, 2003, the arbitral tribunal by the said letter recorded these facts and extended the time to comply with the said directions. The arbitral tribunal directed the respondents, if they so desired, to file their statements on or before 6th February, 2004 and also directed the parties to file their replies to those statements, if they so desired on or before 6th March, 2004. It was made clear that on completion of the said pleadings, the parties would be informed of the next date of meeting in consultation with the co-arbitrators.

16. On 6th February, 2004, the respondent no.1 filed written statement before the arbitral tribunal and also counter claim. On 18th March, 2004, said Mr.Lalitkumar Sanghavi filed re-joinder.

17. On 15th June, 2004, the learned presiding arbitrator informed the advocates representing the parties that in consultation with the co-arbitrators, the next meeting would be held on 30th June, 2004 for proceeding with the further hearing in the matter and instructed the parties to remain present.

18. Mr.Lalitkumar Sanghavi through his advocate's letter dated 21st June, 2004, informed the arbitral tribunal that the conference hall had been fixed as a venue for the said arbitration meeting proposed to be held on 30th June, 2004 and also forwarded a copy thereof to the learned advocates representing the respondents.

19. Learned advocate representing the predecessor of the petitioners by his letter dated 16th September, 2004 informed the arbitral tribunal about the venue of the meeting fixed for the arbitration

meeting proposed by the arbitral tribunal pursuant to the letter dated 10th September, 2004.

20. On 29th September, 2004, M/s.Mahendra Patel & Associates advocates representing respondent nos.2 to 4 informed the advocate of the said predecessor of the petitioners that they were filing Vakalatnama on behalf of respondent nos.2 to 4 in the next meeting before the arbitral tribunal and requested to furnish the copies of the claims and other proceedings filed by the parties and also to inform the next date of meeting and venue.

21. On 30th September, 2004, the arbitral tribunal held a meeting and recorded that respondent nos.2 to 4 had not filed their statements of claim and if they so desired, they should file their statements of claim on or before 15th October, 2004 and to serve a copy thereof upon the other parties. The arbitral tribunal also observed that except Mr.Lalitkumar Sanghavi, other parties had not deposited the fees as directed in the meeting dated 8th October, 2003. It was recorded in the said meeting that at the time when the arbitral tribunal had suggested small fees of Rs.10,000/- to be paid by each of the parties to each of the three arbitrators, thinking that the matter would be worked out in two or three sitting, however, it was not cleared that the matter would be worked out at short time. The arbitral tribunal accordingly directed the claimants to deposit a further sum of Rs.20,000/- with each of the three arbitrators. It was further directed that since the other respondents had not paid, the respondent no.1, separately as a party, and respondent nos.2 to 4 in one set as other party to deposit a sum of Rs.30,000/- with each of the three arbitrators on or before 15th October, 2004 and directed that the next meeting would be held on 21st October, 2004 at 5:00 p.m.

22. On 11th October, 2004, the said Lalitkumar Sanghavi through his advocate address a letter to the arbitral tribunal placing on record that the respondent no.1 had not complied with the directions issued by the arbitral tribunal in the meeting held on 8th October, 2003 and was addressing the correspondence to the arbitral tribunal and requested that since the parties are represented by their advocate, the arbitral tribunal shall not entertain any of the correspondence directly by any of the parties. The said Mr.Lalitkumar Sanghavi requested the arbitral tribunal to proceed in accordance with law since the respondent no.1 had filed his reply to the statement of claim. The said Mr.Lalitkumar Sanghavi also raised the question that if the respondent no.1 was not in a position to pay the fees of the arbitral tribunal, then how he could appoint an advocate to represent him and also nominate the arbitrator. The said Mr.Lalitkumar Sanghavi contended that the respondent no.1 was dealing with the matter and his intention was to sabotage the arbitration proceedings to escape from his liabilities.

23. The said Mr.Lalitkumar Sanghavi through his advocate's letter dated 18th October, 2004 informed the arbitral tribunal that the venue of the next meeting was fixed at Markand Ghandy & Company's hall on 21st October, 2004. Similar information was also provided to the advocates representing the respondents.

24. On 21st October, 2004, the arbitral tribunal held a meeting . The arbitral tribunal directed the learned advocate representing the respondent no.1 to prepare a submission setting out the contention that the dispute was not arbitrable and that the dispute was beyond the scope of the arbitration clause and as such was without

jurisdiction and also to prepare a compilation of all the necessary documents in support of his contentions within a period of four weeks from the date of the said meeting and to submit a copy thereof to the advocate representing the predecessor of the petitioners. The arbitral tribunal adjourned the next meeting to 5th January, 2005 at 2:30 p.m.

25. The said Mr.Lalitkumar Sanghavi through his advocate's letter dated 3rd November, 2004 informed the learned advocates representing the respondents in continuation of his earlier letter dated 5th October, 2004 and conveyed the amounts spent by him to the tune of Rs.3300/- towards hall charges and miscellaneous expenses on the meetings held by the arbitral tribunal and requested the respondents to pay their respective shares at the earliest.

26. On 25th November, 2004, the respondent no.1 through his advocate filed an application under section 16 of the Arbitration Act before the arbitral tribunal raising various objections to the tenability of the arbitral proceedings.

27. The said Mr.Lalitkumar Sanghavi through his advocate's letter dated 4th December, 2004 sent a reminder to the learned advocates representing the respondents to contribute on the part of their clients towards the expenses incurred by the petitioners.

28. The said Mr.Lalitkumar Sanghavi through his advocate's letter dated 17th December, 2004 informed the arbitral tribunal that Mr.Lalitkumar Sanghavi had undergone redo coronary by-pass surgery and was under medical attention and requested to provide any other convenient date of hearing. The arbitral tribunal had fixed the meeting on 5th January, 2005. The said Mr.Lalitkumar Sanghavi

through his advocate's letter dated 5th January, 2005 informed the learned advocates representing the parties and also to the arbitral tribunal that the arbitral tribunal had already adjourned the arbitral meeting proposed to be held on 5th January, 2005 and the next date would be communicated through the learned presiding arbitrator.

29. On 28th February, 2005, the arbitral tribunal informed about the venue of the next hearing and sent a similar communication to the advocates representing the respondents.

30. On 1st March, 2005, the said Mr.Lalitkumar Sanghavi filed his reply to the application filed by the respondent no.1 under section 16 of the Arbitration Act before the arbitral tribunal.

31. The said Mr.Lalitkumar Sanghavi through his advocate's letter dated 3rd March, 2005 once again sent reminder to the learned advocates representing the respondents to pay the contribution of their respective clients to him towards various expenses incurred by petitioners.

32. Mr.Lalitkumar Sanghavi through his advocate addressed a letter to other two arbitrators and also to the parties informing that he had received a call from the office of the presiding arbitrator on 28th February, 2005 by cancelling the meeting proposed to be held on 4th March, 2005 and in view of the learned advocate having given his assurance that he would inform all the parties concerned, he was informing the parties as well as other two arbitrators. The learned advocate however, apologizes for the delay in conveying the said message to the other two arbitrators and the parties.

33. On 4th April, 2005, the arbitral tribunal hold a meeting and after some discussion between the arbitral tribunal and the parties, and advised that the matter could be settled. The parties required some time to consider as to how the matter could be settled. The arbitral tribunal accordingly adjourned the meeting to 20th April, 2005.

34. The learned advocate of the predecessor of the petitioners by his letter dated 13th April, 2005 to the learned arbitrators and to the respondents informed about the venue of the next meeting proposed to be held on 20th April, 2005. On 20th April, 2005, the learned advocate representing the petitioners once again informed about the expenses incurred by the petitioners on the meetings held and called upon the respondents to pay their part of contribution.

35. The predecessor of the petitioners by his advocate's letter dated 30th April, 2005 to the learned advocate representing the respondent no.1 recorded that in the meeting held on 20th April, 2005 before the arbitral tribunal, the respondent no.1 had made submission that he would make the payment of Rs.2425/- within a week time. The respondent no.1 was reminded to make the said payment as early as possible. He also informed the venue of the next meeting proposed to be held on 22nd June, 2005 to the parties.

36. On 22nd June, 2005, the respondent no.1 filed an affidavit before the arbitral tribunal and enclosed a copy of the plaint filed by the wife of the petitioner in the Small Causes Court and also an affidavit of the petitioner in Interim Notice No.441 of 2000 stating that the partnership firm had done no business from last 37 years. The respondent no.1 requested the arbitral tribunal to dismiss the claim of the petitioner with compensatory costs alleging unnecessary

harassment by the petitioner and causing mental torture and agony to him.

37. On 11th October, 2005, the arbitral tribunal held a meeting. In the said meeting, it was stated that the arbitral tribunal had fixed their fees on ad-hoc basis hoping that the matter would be settled between the parties and since there was no settlement, the arbitral tribunal decided to set out the terms of the fees. The parties were informed that each of the arbitrators would charge a sum of Rs.15,000/- per sitting and the fees should be counted from the first day they sat in the arbitral tribunal. The arbitral tribunal also recorded that respondent no.2 had not only not paid any fees but had also not attended one or two sessions. The arbitral tribunal accordingly directed the petitioners to pay Rs.40,000/- to the arbitrators within a period of two weeks and directed the respondent no.1 to pay Rs.15,000/- to each of the arbitrators within two weeks which would cover the fees till the date of the said directions and one more sitting, if necessary and directed that further directions would be given for future proceedings. The arbitral tribunal also directed the respondent no.1 to pay 1/3rd expenses incurred so far by the petitioners. In the said meeting, the respondent no.1 through his advocate made the submissions on the application filed under section 16 of the Arbitration Act. The arbitral tribunal gave liberty to the petitioners to prepare the affidavit in reply to the additional affidavit filed by the respondent no.1 on or before 30th October, 2005 and adjourned the meeting to 25th November, 2005.

38. On 22nd November, 2005, the learned presiding arbitrator informed the learned advocates representing the parties about the cancellation of the meeting which was fixed on 25th November, 2005

and fixed the next meeting on 21st December, 2005. On 22nd November, 2005, the petitioners filed affidavit to the additional affidavit filed by the respondent no.1 before the arbitral tribunal.

39. The learned presiding arbitrator by his letter dated 24th February, 2006 informed the learned advocates representing the parties that in consultation with the co-arbitrators, the next meeting would be held on 29th March, 2006. On 11th July, 2006, the learned presiding arbitrator informed the parties that the next meeting would be held on 24th July, 2006.

40. The respondent No.1 through his advocate's letter dated 20th July, 2006 addressed to the arbitral tribunal and also to the learned advocates representing the predecessor of the petitioners informed that the respondent no.1 had already filed Interim Petition No.256 of 2006 for quashing the order dated 31st October, 2003 by which the matter was referred to arbitration and the said petition was fixed for hearing on 26th July, 2006. The respondent no.1 also informed that he had already fixed seven matters before different Courts, including Bombay High Court, due to which it would not be possible for him to attend the arbitration proceedings. He further informed that in view of the change of advocates by the petitioners, he would have to re-argue the matter i.e. regarding tenability of the arbitration proceedings which might not survive if interim petition filed by the respondent no.1 was disposed of upholding his contention. The respondent no.1 accordingly requested the arbitral tribunal to adjourn the meeting to any other date convenient to the arbitral tribunal.

41. The respondent no.1 through his advocate's letter dated

15th November, 2006 addressed to the arbitral tribunal informed that by an order dated 26th July, 2006, the learned single Judge of this Court in the said Interim Petition No.256 of 2006 filed by the respondent no.1 had observed that the respondent no.1 could move for dissolution of the arbitral proceedings before the arbitral tribunal. He further informed that in the appeal filed by the respondent no.1 (778 of 2006), the Division Bench of this Court had observed that the reliefs claimed by the respondent no.1 in his interim arbitration petition could be granted by the arbitral tribunal. The respondent no.1 forwarded a copy of the order passed by this Court and requested to fix an early date of hearing to decide the said application filed by the respondent no.1. The respondent no.1 contended that till date the respondent no.1 had already contributed Rs.1,50,000/- towards the fees of the arbitral tribunal and other expenses in holding of the arbitration meetings.

42. The respondent no.1 also referred to an order dated 21st February, 2003 passed by the then designate of the Chief Justice that the petitioners in the first instance shall contribute towards the expenses / fees to the arbitrators subject to final order. By the said order, respondent no.1 requested the arbitral tribunal to direct the petitioners to refund an amount of Rs.1,50,000/- to respondent no.1 before fixing the next date of hearing and if the petitioners did not comply with the said order, the arbitration claim should be dismissed and the award be made accordingly.

43. On 29th October, 2007, the learned presiding arbitrator informed the parties in consultation with his two co-arbitrators that the matter was pending since June, 2003 and though the meeting was called between June, 2004 and 11th April, 2007, the petitioners herein

took no interest in the matter and even the fees directed to be given was not paid. The arbitral tribunal informed that the arbitration proceedings stood terminated and all interim orders passed by the arbitral tribunal also stood vacated.

44. The learned advocate representing the said Mr.Lalitkumar Sanghavi by his letter dated 8th January, 2008, to the arbitral tribunal and also to the learned advocates representing the respondents recorded that the arbitral tribunal had incorrectly recorded that his client was not interested in the matter and that the fees directed to be paid were not paid. It was stated that the petitioners had paid all the fees as directed by the arbitral tribunal and enclosed the copies of the letters addressed by the earlier advocates representing the petitioners regarding the same for perusal of the arbitral tribunal. The petitioners also pointed out that as late as on 24th October, 2003, respondent no.1 had filed an affidavit that he was not in a position to pay the fees of the arbitral tribunal. The respondent no.1 also had not paid any common expenses which were borne by the petitioners. The petitioners requested the arbitral tribunal to revoke the said letter dated 29th October, 2007 and to modify the same and to record that the proceedings were being terminated due to non-compliance of the orders / directions as also non-payment of fees and charges by .

45. Learned advocate representing the petitioners by his letter dated 29th January, 2008 requested the arbitral tribunal to fix the appointment for meeting at the earliest in view of the urgency in the matter.

46. In the meantime, filed Notice of Motion No.4515 of 2007 on the ground that the arbitral tribunal had terminated the

proceedings and applied for discharge of the Court Receiver.

47. On or about 17th January, 2008, the said Mr.Lalitkumar Sanghavi filed Arbitration application No.44 of 2008 for appointment of an arbitrator which was opposed by . By an order dated 24th September, 2010, the learned single Judge of this Court dismissed the said arbitration application and directed the said Mr.Lalitkumar Sanghavi to challenge the said order passed by the arbitral tribunal in a writ petition under Article 226 of the Constitution of India.

48. By an order dated 13th February, 2008, this Court disposed of Notice of Motion No.4515 of 2007 filed by for vacating the order of appointment of the Court Receiver.

49. On 7th October, 2012, the said Mr.Lalitkumar Sanghavi expired. It is the case of the petitioners, who are the legal heirs and representatives of late Mr.Lalitkumar Sanghavi that they were not aware of any such proceedings.

50. Some time in the year 2013, the petitioners filed Special Leave Petition (No.4267 of 2013) before the Supreme Court and the impugned order dated 24th September, 2010 passed by the learned designate of the Chief Justice rejecting the application filed under section 11 of the Arbitration Act and directing the petitioners to challenge the order passed by the arbitral tribunal in writ jurisdiction.

51. On 4th March, 2014, the Supreme Court dismissed the said special leave petition filed by the petitioners and held that the view taken by the learned designate of the Chief Justice that the remedy of the petitioners would lie in invoking jurisdiction of the High Court

under Article 226 of the Constitution of India was not in accordance with law declared by the Supreme Court in the case of **S.B.P. & Co. vs. Patel Engineering Limited (2005) 8 SCC 618**, it was however, clarified that it would not mean that the application filed under section 11 would be maintainable.

52. Learned counsel for the respondents had urged before the Supreme Court that the remedy of the petitioners would be to approach the arbitral tribunal seeking recall of their decision to terminate the arbitration proceedings. The Supreme Court held that the termination of the arbitral proceedings could only fall within the scope of section 32(2)(c) of the Arbitration & Conciliation Act i.e. 'continuation of the proceedings it became impossible' and by virtue of section 32(2), on termination of the arbitral proceedings the mandate of the arbitral tribunal also came to an end. The Supreme Court however, held that the question as to whether the mandate of the arbitral tribunal stood legally terminated or not can be examined by the Court as provided under section 14(2) of the Arbitration Act and accordingly opined that the apprehension of the petitioners that they would be left remedy-less was without basis in law. The Supreme Court held that the petitioners would be at liberty to approach the appropriate Court for determination of the legality of the termination of the mandate by the arbitral tribunal which in turn was based upon an order dated 29th October, 2007 by which the arbitral proceedings were terminated.

53. Pursuant to the said liberty granted by the Supreme Court, the petitioners filed this proceedings under section 9 read with section 14 of the Arbitration Act *inter-alia* praying for setting aside the termination of the proceedings by the arbitral tribunal contained in the

order dated 29th October, 2007 passed by the arbitral tribunal and to direct the constitution of the arbitral tribunal as per the arbitration agreement contained in the Deed of Partnership dated 20th October, 1962 and also seek interim measures.

54. Mr. Shah, learned counsel for the petitioners invited my attention to various correspondence exchanged between the parties and also with the arbitral tribunal and also invited my attention to various minutes of meetings held by the arbitral tribunal and would submit that the predecessor of the petitioners had taken steps promptly from time to time since the date of appointment of the arbitral tribunal. The predecessor of the petitioners had filed a statement of claim along with the documents and had also arranged for venue of the meeting as directed by the arbitral tribunal from time to time and had incurred various expenditure on arranging such venue for holding the arbitral meetings. The said predecessor of the petitioners had also informed the arbitral tribunal as well as the respondent from time to time about such venue and had attended all the meetings except one meeting when the said predecessor of the petitioners was required to undergo a surgery.

55. Learned counsel for the petitioners submits that some of the meetings were cancelled by the arbitral tribunal in view of the members of the arbitral tribunal having personal difficulties. The predecessor of the petitioners had never asked for adjournments of any of the meetings except on one occasion due to his surgery. Learned counsel for the petitioners submits that though the arbitral tribunal had issued direction to all the parties to file their respective statements of claim, however, except the predecessor of the petitioners, none of the parties have filed their statements of claim.

The respondent no.1 had filed the written statement belatedly. The other respondents did not file any pleadings. He submits that the respondent no.1 had also filed an application under Section 16 of the Arbitration Act before the arbitral tribunal belatedly. He submits that the arbitral tribunal had heard the submissions of the learned advocate representing the respondent no.1 on that application filed under section 16 of the Arbitration Act, however, did not decide the said application. It is submitted that the respondent no.1 had belatedly also applied for closure of the arbitral tribunal on the ground that the predecessor of the petitioners had made an alleged false and incorrect statement in the pleadings that the partnership firm was carrying on business. He submits that even the said application filed by the respondent no.1 admittedly was not decided by the arbitral tribunal.

56. It is submitted by the learned counsel for the petitioners that the petitioners had paid all the fees of the arbitral tribunal from time to time whatever was directed and had incurred various expenses on booking of conference hall for holding the meetings of the arbitral tribunal. Though the petitioners had called upon the respondents to contribute their share towards the expenditure and to pay the same to the petitioners, none of the respondents have paid any contribution. He submits that in the impugned order, though the arbitral tribunal held that the predecessor of the petitioners was not interested in pursuing the arbitral proceedings, no reasons/details are given in the impugned order. The respondents were, on the contrary, delaying the proceedings on one or the other grounds. He submits that the so called reasons given by the arbitral tribunal in the impugned order are also totally vague and *ex-facie* contrary to the record.

57. Learned counsel for the petitioners submits that the arbitral tribunal had revised their fees from time to time though no arguments on merits had taken place before the arbitral tribunal. In view of the respondents delaying the proceedings on one or the other grounds, the predecessor of the petitioners could not have been blamed for alleged delay in prosecuting the arbitral proceedings. It is submitted that the impugned order passed by the arbitral tribunal is very harsh and arbitrary. Learned counsel for the petitioners invited my attention to various orders passed by this Court, proceedings filed by the respondent no.1 and also the order passed by the Supreme Court and would submit that the present application filed under section 9 read with section 14 is maintainable.

58. Learned counsel for the petitioners submits that in so far as the office premises described at serial no.2 in Exhibit-A to the arbitration petition is concerned, the said partnership firm was using the said premises as the office of the partnership firm for the purpose of carrying on the business as if the same was an asset of the suit firm. He submits that the petitioners had already appointed the Court Receiver in respect of the properties described at Exhibit-A to the arbitration petition. My attention is also invited to the correspondence exchanged between the respondent no.1 and the office of the Court Receiver by which the respondent no.1 applied for an agency of the Court Receiver in respect of the said office premises.

59. It is submitted that since the arbitral tribunal terminated the arbitral proceedings, the respondent no.1 took an advantage of the said order and applied for vacating the said order of appointment

of the Court Receiver by filing an application. Since the arbitral tribunal had already terminated the proceedings, this Court vacated the order of appointment of the Court Receiver in respect of the properties described at Exhibit-A to the petition. He submits that in any event, this Court has already passed an order of status-quo on 5th May 2014 in respect of all the assets of the partnership firm. He submits that the order passed by this Court appointing the Court Receiver which was vacated earlier be restored, and prays for appointment of a Court Receiver in respect of the entire properties described at Exhibit-A.

60. Mr.Sen, learned senior counsel appearing for the respondent nos.3 and 4, who were also the partners in the partnership firm, would submit that the predecessor of the petitioners had not complied with the directions issued by the arbitral tribunal for payment of fees and had not taken any steps in pursuing the arbitral proceedings expeditiously. Learned senior counsel invited my attention to the letters addressed by the arbitral tribunal and more particularly the letter dated 22nd November 2005 and would submit that the arbitral tribunal had cancelled the meeting held on 25th November, 2005 and had fixed the meeting on 22nd December, 2005. The predecessor of the petitioners, however, did not take any steps. It is submitted that since the arbitral tribunal had rightly terminated the proceedings, the mandate of the arbitral tribunal is also terminated. It is submitted that the arbitration agreement accordingly stood exhausted and no order for appointment of the arbitral tribunal or interim measures under section 9 can be granted by this Court.

61. Mr.Anilkumar, learned counsel for the respondent no.1

adopted the submissions made by Mr.Sen, learned senior counsel for the respondent nos.3 and 4. In addition to the said submissions, it is submitted that the Special Leave Petition filed by the petitioners is already dismissed by the Supreme Court. The predecessor of the petitioners had filed the statement of claim after two years. No urgency is shown by the petitioners. It is submitted that the view of the arbitral tribunal is a possible view and no interference with such possible view is permissible.

62. It is submitted by the learned counsel for the respondent no.1 that the predecessor of the petitioners had not paid the entire fees of the arbitral tribunal fully and did not take any steps to prosecute the arbitral proceedings expeditiously. He submits that the arbitral tribunal was thus right in terminating the proceedings.

63. In so far as the interim relief in respect of the office/residential premises described at serial No.2 of Exhibit-A to the petition is concerned, it is submitted that the said premises were of ownership of the respondent no.1 and was not a partnership asset as falsely claimed by the petitioners. Learned counsel invited my attention to some of the documents in support of this submission and would submit that the said premises is standing in the name of the respondent no.1 as can be reflected from the electricity bill, gas connection bill, society bill, share certificate in respect of the said premises issued by the society, letter of the society confirming the membership of the respondent no.1, ration card showing the name of the respondent no.1 at the said address and bank statement showing the name of the respondent no.1 at the said address.

64. Learned counsel for the respondent no.1 invited my

attention to the order dated 7th February, 2008 passed by this Court refusing to grant interim relief in favour of the petitioners on the ground that the arbitral tribunal had already terminated the proceedings. He submits that the division bench of this Court did not interfere with the said order except granting the interim injunction for the period of three months. It is submitted that since 7th February, 2008, there is no order of appointment of the Court Receiver in respect of the said office/residential premises in force. The respondent no.1 has, however, not created any third party rights in respect of the said premises so far.

65. Learned counsel for the respondent no.1 also invited my attention to the order dated 5th December, 2002 and would submit that this Court had clarified its earlier order appointing the Court Receiver to the effect that the Court Receiver was appointed in respect of the leasehold rights of the firm in the properties in question. It is submitted that thus even at the threshold, when the Court Receiver was appointed, this Court had not appointed Court Receiver in respect of the office/residential premises which is alleged to be held by the respondent no.1. In support of the aforesaid submissions, learned counsel for the respondent no.1 also invited my attention to the suit partnership deed and would submit that even under the said partnership deed, there was a reference only to the lease of the property at Vile Parle (East) and there was no reference to the said residential property of the respondent no.1 at Vile Parle (West). It is submitted that no Receiver in respect of the said office/residential premises shall be appointed by this Court and ad-interim order of status-quo passed by this Court shall also be vacated.

66. Mr.Vaishnava, learned counsel for the respondent no.2 also adopted the submissions made by Mr.Sen, learned senior counsel for the respondent nos.3 and 4. In addition to those submissions, it is submitted by the learned counsel that the predecessor of the petitioners had not taken any interest in pursuing the arbitral proceedings expeditiously. He submits that the judgment and order delivered by this Court in case of **Wanbury Ltd. Vs. Candid Drug Distributors** on 15th July, 2015 in Arbitration Petition No.1461 of 2014 is distinguishable. In the said matter, the petitioner had applied for recall of the order passed by the arbitral tribunal whereas, in the present proceedings, no such application was made by the predecessor of the petitioners. Learned counsel also invited my attention to the order passed by the division bench and would submit that though the division bench had directed that the arbitral proceedings shall be decided expeditiously, the said proceedings could not be decided expeditiously because of the delay on the part of the predecessor of the petitioners.

67. Learned counsel for the respondent no.2 invited my attention to the letter dated 8th January, 2008 addressed by the petitioners to the arbitral tribunal in which the petitioners requested the arbitral tribunal to revoke the order dated 29th October, 2007, however, on the ground that the proceedings were terminated due to non-payment of fees and charges of the respondent no.1. It is submitted that the petitioners have thus accepted the validity of the said order dated 29th October, 2008 terminating the proceedings.

68. Mr.Shah, learned counsel for the petitioners in rejoinder submits that even the said letter dated 8th January, 2008 addressed by the petitioners to the arbitral tribunal would not stop the

petitioners from adopting the legal remedy available in law. He submits that the predecessor of the petitioners had deposited an amount of Rs.90,000/- with the arbitral tribunal though no substantial work in the meeting was done. The arbitral tribunal had simplicitor adjourned the meeting by issuing directions from time to time either for payment of further fees or for filing of the pleadings. It is submitted that the arbitral tribunal admittedly did not decide the application filed by the respondent no.1 under section 16 of the Arbitration Act. He submits that in any event, the arbitral tribunal could not have terminated the proceedings on the ground that the petitioners had not paid the fees of the arbitral tribunal.

69. Insofar as the prayer for appointment of the Court Receiver in respect of the properties described at Exhibit-A including the office/residential premises is concerned, learned counsel invited my attention to various orders passed by this Court from time to time and also the application filed by the respondent no.1 as an agent of the Court Receiver in respect of the said office/residential premises. He submits that the respondent no.1 has misled this Court by raising a false plea that the Court Receiver was not appointed in respect of the said office/residential premises. In support of this submission, learned counsel invited my attention to the order passed by this Court on 22nd January, 2007, Minutes of meeting held by the Court Receiver on 25th July, 2007 fixing the royalty of Rs.26,000/- and also the order passed by this Court clarifying that the Receiver was appointed in respect of both the properties. He submits that since the respondent no.1 has transferred several tenancies and have not given accounts in respect of the rent recovered in respect of the partnership assets, the order of appointment of the Court Receiver which was passed by this Court

and was in force till the arbitral proceedings were terminated be restored and interim measures as prayed be allowed.

REASONS AND CONCLUSIONS :

Whether the present proceedings filed under section 9 read with section 14 of the Arbitration Act are maintainable ?

70. Respondent no.2 has raised the issue of maintainability of the present petition under section 9 read with section 14 of the Arbitration Act on the ground that the arbitral proceedings are already terminated by the arbitral tribunal and thus the application under section 14 of the Arbitration Act would not be maintainable. It is also the case of respondent no.2 that no relief under section 9 of the Arbitration Act also thus can be granted in the same proceedings as the reliefs under section 9 read with section 14 of the Arbitration Act are two different reliefs and cannot be claimed in the same petition.

71. A perusal of the record indicates that the predecessor of the petitioners have filed an application under section 11 of the Arbitration Act after the impugned award was passed by the arbitral tribunal on 29th October, 2007 terminating the arbitral proceedings. The learned designate of the Chief Justice dismissed the said arbitration application (No.44 of 2008) holding that the remedy of the petitioners herein would be by filing a writ petition and was not an application under section 11 of the Arbitration Act. The petitioners herein impugned the said order passed by the learned designate of the Chief Justice by filing a Special Leave Petition in the Supreme Court. The Supreme Court by an order and judgment dated 4th March, 2014 after hearing learned counsel appearing for the parties, dismissed the said Special Leave Petition, converted into Civil Appeal No.3148 of 2014. However, it has been held by the Supreme Court

that the order dated 29th October, 2007 by which the arbitral tribunal had terminated the arbitral proceedings could only fall within the scope of section 32(2)(c) of the Arbitration Act i.e. 'continuation of the proceedings had become impossible'. It is held that by virtue of section 32(3), on termination of the arbitral proceedings, the mandate of the arbitral tribunal also comes to an end. The Supreme Court has held that having regard to the scheme of the Act and more particularly on cumulative reading of sections 32 and 14 of the Arbitration Act, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the Court as provided under section 14(2) of the Arbitration Act. The Supreme Court negated the contention of the petitioners that the petitioners would be left remedy-less. By the said order, the Supreme Court granted liberty to the petitioners to approach appropriate Court for determination of the legality of the termination of the mandate by the arbitral tribunal which was based upon an order dated 29th October, 2007 by which the arbitral proceedings were terminated.

72. A perusal of the prayers in the arbitration petition indicate that the petitioners had *inter-alia* prayed for quashing and setting aside the termination contained in the impugned order dated 29th October, 2007 and to direct constitution of the arbitral tribunal as per the arbitration agreement contained in the Deed of Partnership dated 20th October, 1962 and has also prayed for various interim measures, including the prayer for appointment of the Court Receiver and injunction. The petitioners have filed the present petition under section 9 read with section 14 of the Arbitration Act. In my view, as far as the submission of learned counsel for respondent no.2 that the present proceedings are not maintainable under section 14 is concerned, the same is devoid of merits.

73. The Supreme Court while dismissing the said Civil Appeal filed by the petitioners, has clarified that the petitioners would be at liberty to approach appropriate Court for determination of the legality of the termination of mandate by the arbitral tribunal which was based upon the order dated 29th October, 2007 passed by the arbitral tribunal. It is also held that the question as to whether the mandate of the arbitrator stood legally terminated or not can be examined by the Court as provided under section 14(2) of the Arbitration Act. In my view the present petition for such declaration and for constitution of arbitral tribunal is maintainable.

74. Insofar as the submission of learned counsel for respondent no.2 that no interim reliefs can be claimed in the same petition in which the petitioners have prayed for reliefs under section 14 of the Arbitration Act are concerned, it is not in dispute that certain interim reliefs were in force before termination of the arbitral proceedings by the arbitral tribunal in favour of the predecessor of the petitioners. In view of the termination of the proceedings by the arbitral tribunal, those interim orders also stood vacated. The petitioners have thus applied for continuation of those interim measures in the same petition on the premise that if the mandate of the arbitral tribunal is restored and the impugned order dated 29th October, 2007 is set-aside, interim measures which were in existence prior to the date of the said order dated 29th October, 2007 shall also be restored. In my view, consideration of the interim measures under section 9 of the Arbitration Act would depend upon the reliefs sought by the petitioners under section 14 of the Arbitration Act. In my view, there is thus no merit in this submission of learned counsel for respondent no.2.

Whether the mandate of the arbitral tribunal stood legally terminated based upon the order dated 29th October, 2007 or not ?

75. A perusal of the record indicates that the existence of the arbitration agreement was not in dispute. The predecessor of the petitioners had filed an application for appointment of the arbitrator by filing proceedings under section 11 of the Arbitration Act before the Hon'ble Chief Justice. By an order dated 21st February, 2003, the learned designate of the Chief Justice constituted the arbitral tribunal in Arbitration Application No.263 of 2003 under section 11 of the Arbitration Act. The said order passed by the learned designate of the Chief Justice was not impugned by any of the respondents.

76. On 8th October, 2003, the arbitral tribunal issued the directions to the parties to file their respective statements of claim on or before 28th November, 2003 and to exchange as between the three groups by the next date. Each of the parties were also directed to file their respective replies i.e. statements on or before 10th January, 2004 and to hand over copy thereof to each other on the same day. The arbitral tribunal directed each group to deposit a sum of Rs.10,000/- with each of the arbitrator within a period of four weeks from the date of the said order and directed the parties to remain present before the arbitral tribunal on 21st January, 2004 for further directions as may be necessary. It is not in dispute that the predecessor of the petitioners along with advocate's letter dated 21st October, 2003 had forwarded three cheques of Rs.10,000/- in favour of each of the members of the arbitral tribunal.

77. A perusal of the record indicates that respondent no.1 had addressed a letter to the presiding arbitrator on 24th October, 2003, alleging that without his consent and at the instance of the predecessor of the petitioners, the dispute had been referred to the arbitral tribunal in respect of the suit firm, which did not have business from 1962 till the date of writing the said letter and did not have any income. It was also stated that the suit firm had only one property left behind by the deceased father Mr.Vanmalidas Sanghavi and the said land was given to the suit firm on lease for a period of 50 years. In the said letter, respondent no.1 informed the presiding arbitrator that he was not in a position to pay the fees of the arbitral tribunal on the ground that he had no source of income. It was submitted that since the only property of the suit firm was to be equally divided amongst the brothers, there was no dispute which was required to be decided by the arbitral tribunal and therefore, requested the presiding arbitrator not to continue with the arbitration proceedings and requested that the said proceedings be dropped.

78. A perusal of the record clearly indicates that though the presiding arbitrator repeatedly issued directions to all the parties to file their respective statements of claim, dispute having arisen under the Partnership Deed, except predecessor of the petitioners, none of the respondents filed any statement of claim. The respondent no.1 had filed a written statement before the arbitral tribunal.

79. A perusal of the record also indicates that the arbitral tribunal had revised their fees twice on the ground that the arbitral tribunal had expected the disposal of the arbitral proceedings at the earliest and since the same was not disposed of in few meetings held by the arbitral tribunal, the parties were required to pay the revised

fees and that also with retrospective effect.

80. A perusal of the minutes of the meetings of the arbitral proceedings does not indicate that any discussion on merits of the matter had taken place before the arbitral tribunal. One hearing was cancelled at the instance of the predecessor of the petitioners on the ground that he was required to undergo a surgery. Few meetings were cancelled in view of pre-occupation / personal difficulties of the members of the arbitral tribunal. The record also indicates that respondent no.1 had applied for vacating the order passed by the learned designate of the chief Justice appointing the arbitral tribunal on the ground that there was no business of the suit firm for last more than three decades. By an order dated 26th July, 2006, this Court dismissed the said Interim Petition (256 of 2006) on the ground that the respondent no.1 herein had already filed an application before the learned arbitrator raising the same contention as were raised in the said interim petition which could be always decided by the arbitral tribunal. The Division Bench of this Court also by an order dated 6th November, 2006 did not interfere with the said order dated 26th July, 2006.

81. A perusal of the record indicates that the respondent no.1 had also filed an application before the arbitral tribunal on 22nd June, 2005 alleging that the predecessor of the petitioners had made an incorrect statement in the present proceedings that the partnership firm was carrying on business, whereas in the affidavit filed before the Small Causes Court in Interim Notice No.441 of 2000, the said predecessor of the petitioners had alleged that the partnership firm had done no business in last 37 years. The arbitral tribunal however, did not decide the said application filed by the respondent no.1.

82. It is not in dispute that the respondent no.1 had filed an application under section 16 of the Arbitration Act before the arbitral tribunal raising the issue of jurisdiction on 25th November, 2004. Since the respondent no.1 had filed such application under section 16 of the Arbitration Act, the predecessor of the petitioners filed the reply opposing the application under section 16 of the Arbitration Act. The respondent no.1 through his advocate, made his submissions before the arbitral tribunal on that application under section 16 of the Arbitration Act in the meeting held on 11th October, 2005. It is not in dispute that even the said application filed by the respondent no.1 under section 16 of the Arbitration Act was not disposed of by the arbitral tribunal any time prior to the order dated 29th October, 2007 terminating the arbitral proceedings. In my view, since the proceedings under section 16 of the Arbitration Act were admittedly not decided by the arbitral tribunal though the arguments of the respondent no.1 was concluded and the predecessor of the petitioners were not heard on that application, the arbitral tribunal could not have proceeded with the arbitral proceedings on merits. A perusal of the minutes of the meeting does not indicate that the arbitral tribunal had directed the predecessor of the petitioners to commence his arguments on the said application though several meetings were called by the arbitral tribunal after 11th October, 2005, no further discussions on the said application under section 16 of the Arbitration act took place.

83. A perusal of the record also indicates that in the meeting held on 4th April, 2005, the arbitral tribunal had advised the parties to settle the matter amicably and on that ground the matter was adjourned to 20th April, 2005. A perusal of the minutes of the meeting

does not indicate that the parties had agreed to settle the dispute amicably or had asked for further adjournment on that ground.

84. A perusal of the minutes of the meeting also indicates that the respondent no.1 through his advocate had addressed a letter to the arbitral tribunal on 20th July, 2006 and informed about Interim Petition No.256 of 2003 filed before the the learned designate of the Chief Justice for vacating the order by which the matter was referred to arbitration and the said petition was fixed for hearing on 26th July, 2006. The respondent no.1 also informed the arbitral tribunal that he had already fixed seven matters before different Courts, including this Court due to which it was not possible for him to attend the arbitration proceedings. It was further suggested that in view of change of the advocates by the predecessor of the petitioners, he would have to re-argue the matter regarding the tenability of the arbitration proceedings which may not survive if interim petition filed by the respondent no.1 was disposed of upholding his contention. The respondent no.1 had asked for adjournment on such grounds before the arbitral tribunal. The said proceedings filed by the respondent no.1 were subsequently decided by the learned designate of the Chief Justice first and thereafter by the Division Bench in the appeal filed by the respondent no.1 (No.778 of 2006) observing that the respondent no.1 could apply for appropriate reliefs before the arbitral tribunal.

85. The respondent no.1 through his advocate's letter dated 15th November, 2006 alleged that the respondent no.1 was not required to pay any fees to the arbitral tribunal and the same was to be contributed at the first instance by the predecessor of the petitioners and prayed that the arbitral tribunal shall direct the predecessor of the petitioners to refund the amount of Rs.1,50,000/-

paid by the respondent no.1 to the arbitral tribunal before fixing the next date of hearing and if the petitioners would not comply with the said order, the arbitration claim should be dismissed and the award to be made accordingly.

86. A perusal of the record indicates that after 15th November, 2006, the arbitral tribunal did not fix any date for hearing or for deciding various applications made by the respondent no.1 and directly by an order dated 29th October, 2007 without hearing the parties terminated the arbitral proceedings.

87. In my view the arbitral tribunal has not given any reasons and has not considered the minutes of the meetings held by the arbitral tribunal and the correspondence exchanged between the parties before coming to the conclusion that the predecessor of the petitioners had not paid fees of the arbitral tribunal and were not taking any interest in the matter. In my view, the the predecessor of the petitioners had pursued the arbitral proceedings regularly and had attended all the meetings. The predecessor of the petitioners had applied for an adjournment only once of the proceedings before the arbitral tribunal on the ground that he was required to undergo a surgery. A perusal of the record on the contrary shows that the respondent no.1 was taking adjournments and had filed applications one after another for stalling the arbitral proceedings. The respondent no.1 also filed civil proceedings in this Court for one or other reliefs and was not successful in obtaining any reliefs from this Court. The respondents had also not complied with the directions issued by the arbitral tribunal from time to time regarding filing of the pleadings and payment of contribution of es expenses incurred by the predecessor of the petitioners. I am thus not inclined to accept the submissions

made by learned counsel for the respondents that there was any default on the part of the predecessor of the petitioners in making payment of fees to the arbitral tribunal or that he was not interested in pursuing the arbitral proceedings.

88. A perusal of the record also clearly indicates that the petitioners had taken steps promptly to book the venue of the arbitral meetings and had communicated the same to the arbitral tribunal as well as to the respondents from time to time. The petitioners had also spent amount on arranging the venue of the arbitral meetings and though had called upon the respondents to contribute their respective share, the same was not contributed by the respondents. The arbitral tribunal has totally overlooked all these documents forming part of record before the arbitral tribunal. In my view, the predecessor of the petitioners could not be found at fault in not proceeding with the matter.

89. This Court in the case of **Wanbury Limited vs. Candid Drug Distributors**, decided on 15th July, 2015, in Arbitration Petition No.1461 of 2014, has adverted to the judgment of the Supreme Court in case of **Mohan Singh & Ors. vs. International Airport Authority of India & Ors., (1997) 9 SCC 132** in which it has been held that the word “shall” described in section 32 though *prima-facie* gives impression of being mandatory character, it is required to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. This Court has held that the word “shall” used in section 32(3) of the Arbitration Act has to be construed as “may” to suppress any public mischief and to prevent injustice in the situation that had

accorded in that case. In my opinion, since the respondents were not interested in pursuing the arbitral proceedings and were stalling the proceedings on one or other ground, the arbitral tribunal ought to have proceeded with the matter by preventing the respondents from committing delay in proceeding with the arbitral proceedings or would have proceeded with the matter in their absence. In my view, since the respondents themselves were responsible for delay in proceeding with the arbitral proceedings cannot be allowed to urge that the arbitral proceedings were rightly terminated by the arbitral tribunal. In my view, the arbitral tribunal ought to have proceeded with the arbitral proceedings expeditiously and could not have permitted the respondents to stall the arbitral proceedings on one or other ground.

90. Insofar as the submission of the learned senior counsel for respondent nos.3 and 4 that in view of the arbitral proceedings having been terminated, the mandate of the arbitral tribunal is also terminated and thus the arbitration agreement is exhausted is concerned, in my view since the order passed by the arbitral tribunal terminating the proceedings in the circumstances aforesaid was unwarranted and the impugned order passed by the arbitral tribunal deserves to be set aside, the mandate of the arbitral tribunal also has to be restored. Be that as it may, even if the mandate of the arbitral tribunal is terminated in the circumstances aforesaid and if such order of termination of the arbitral proceedings is declared as illegal and if the arbitral tribunal which had passed the impugned order is not available for disposal of the arbitral proceedings on its restoration, the claimant is entitled to apply for substitution of the arbitral tribunal under section 15 read with section 11 of the Arbitration Act after satisfying with the terms and conditions mentioned in section 15 of the Arbitration Act. The arbitration agreement in my view in such a

situation would not stand exhausted as canvassed by learned senior counsel for respondent nos.3 and 4.

91. Insofar as interim relief in respect of the office / residential premises described at serial no.2 in Exhibit "A" to the petition is concerned, all through out it was the case of the predecessor of the petitioners that the said premises was also the asset of the suit firm. It is not in dispute that in the earlier petition filed by the predecessor of the petitioners under section 9 of the Arbitration Act Court Receiver was appointed by the Court which order was upheld by the Supreme Court as well as by the Division Bench. The record also indicates that the respondent no.1 had also applied for his appointment as an agent of the Court Receiver on payment of royalty and on other terms and conditions. As a matter of record, the Court Receiver had also fixed some amount of royalty in respect of the said premises. It was only because of the order passed by the arbitral tribunal terminating the arbitral proceedings, this Court did not continue the said order of the appointment of the Court Receiver in respect of both the properties mentioned in Exhibit "A" to the petition.

92. Mr.Shah, learned counsel for the petitioners has invited my attention to the subsequent orders passed by this Court, by which the earlier orders passed by this Court appointing the Court Receiver came to be clarified. This Court has already made it clear that the Court Receiver was appointed in respect of both the properties including the said office / residential premises described at serial no.2 in Exhibit "A" to the petition. In my view, the respondent no.1 has misled this Court by alleging that the clarification of the order was to the effect that there was no appointment in respect of the property described at serial no.2 of Exhibit "A" to the petition.

93. A perusal of the record indicates that there were serious allegations against the respondent no.1 about his activities in respect of the suit properties which was prejudicial to the interest of the other partners. After considering these allegations against the respondent no.1, this Court was satisfied that the averments made by the predecessor of the petitioners about the conduct of the respondent no.1 and had appointed the Court Receiver of the entire properties, including the office / residential premises. In my view, since the respondents were responsible for the arbitral tribunal terminating the arbitral proceedings and by virtue of the said order, this Court has vacated, the interim order which was passed earlier and since the order passed by the arbitral tribunal deserves to be set aside, in my view interim orders passed prior to the date of the said order passed by the arbitral tribunal dated 29th October, 2007 which was in force also deserves to be restored. The order appointing Court Receiver by this Court was confirmed by the Division Bench and by the Supreme Court.

94. Insofar as the submission of learned counsel for the respondent no.1 that the said office / residential premises are owned by the respondent no.1 and his name is reflected in various documents relied upon by learned counsel for the respondent no.1 is concerned, the said issue can be decided by the arbitral tribunal. This Court has not expressed any conclusive opinion about the title in respect of the said property claimed by the predecessor of the petitioners in favour of the partnership firm or by the respondent no.1 as his property and the said issue is kept open.

95. I therefore pass the following order :-

- a). Delay in filing the petition is condoned.
- b). The impugned order dated 29th October, 2007 passed by the arbitral tribunal is set aside. The arbitral proceedings are restored to file. The mandate of the arbitral tribunal is restored. The arbitral tribunal is directed to proceed with the arbitral proceedings and to render an award expeditiously.

If the erstwhile arbitral tribunal or any member thereof is not available for disposal of the arbitral proceedings, the petitioners would be at liberty to take appropriate steps to apply for constitution of arbitral tribunal under section 15 read with section 11 of the Arbitration Act after complying with the conditions thereof.

- d). There shall be interim relief in terms of prayer clauses (iii) and (iv).
- e). It is made clear that insofar as the office / residential premises described at serial no.2 of Exhibit "A" to the petition is concerned, the Court Receiver shall appoint the respondent no.1 or any other person found in possession thereof, as an agent of the Court Receiver on usual terms and conditions and on payment of royalty but without furnishing security. The respondent no.1 is directed to disclose as to whether the respondent no.1 desires to accept the agency of the Court Receiver as directed aforesaid within two weeks from the date of such offer made by the Court Receiver, failing which the Court Receiver shall take forcible possession of the office / residential premises described at serial no.2 of Exhibit "A" to the petition and shall submit a report to this Court for obtaining further

orders.

f). Till the Court Receiver takes possession of the property described in Exhibit "A" to the petition, the petitioners as well as the respondents are restrained from disposing of, creating any third party rights in respect of the assets of the firm M/s.Sanghavi Brothers.

96. The arbitration petition is accordingly disposed of in the aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)

On the oral application of learned counsel appearing for respondent no.1 and respondent no.2, the Court Receiver shall not take forcible possession from respondent no.1 for a period of four weeks from today.

(R.D. DHANUKA, J.)