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

ARBITRATION APPLICATION NO.208 OF 2014

Collin Mario Rebello	...Applicant
V/s.	
Jer R. Kavasmaneck & Ors.	...Respondents

WITH
ARBITRATION APPLICATION NO.223 OF 2014

Darius R. Kavasmaneck	...Applicant
V/s.	
Maharukh M. Oomrigar & Ors.	...Respondents

Mr.Mustafa Kanchwala i/b Kanchwala & Misar & Co. for the Applicant in ARBAP No.208 of 2014 and the Respondent No.4 in ARBAP NO.223 OF 2014.

Mr.K. Satya i/b Bharucha & Partners for the Respondent No.6 in ARBAP No.208 of 2014 and in ARBAP NO.223 OF 2014.

Mr.Mayur Khandeparkar with Mr.Ankit Dhinarjee i/b Dhru & Co. for the Applicant in ARBAP No.223 of 2014 and the Respondent Nos.1 and 2 in ARBAP 208 of 2014.

CORAM : R.D. DHANUKA, J.
DATE : 7TH OCTOBER, 2015.

P.C. :-

1. There is no dispute that the arbitration agreement exists between the parties. By an order dated 18th September, 2012 passed by the Division Bench of this Court in Arbitration Application No.219 of 2012 with Arbitration Application No.220 of 2012, the Division

Bench referred the dispute to the arbitration of Mr. Justice A.P. Shah, former Chief Justice of Delhi High Court.

2. It is not in dispute that the learned arbitrator had entered upon the reference and had issued directions and had framed issues. The parties have already filed pleadings before the then arbitrator.

3. On 9th January, 2014, Mr. Justice A.P. Shah, former Chief Justice of Delhi High Court however, resigned and directed the parties to collect the entire record from his residence.

4. The applicant in both the matters has thus filed two separate applications for appointment of the arbitrator in place of Mr. Justice A.P. Shah, former Chief Justice of Delhi High Court.

5. Mr. Khandeparkar, learned counsel for the applicant in Arbitration Application No. 223 of 2014 and learned counsel for the applicant in Arbitration Application No. 208 of 2014 submitted that Mr. Justice A.P. Shah, former Chief Justice of Delhi High Court is now available for arbitration. It is submitted that the applicant in Arbitration Application No. 223 of 2014 has also taken consent of Mr. Justice A.P. Shah, former Chief Justice of Delhi High Court, who acted earlier as an arbitrator in the dispute between the parties.

6. Learned counsel appearing for the respondent no. 6 however, opposed this application on the ground that it would not be appropriate to refer the matter to Mr. Justice A.P. Shah, former Chief

Justice of Delhi High Court, in view of his resignation tendered on 9th January, 2014 and states that his client is ready and willing to suggest three other names which can be considered for the appointment of the sole arbitrator.

7. Mr.Justice A.P. Shah, former Chief Justice of Delhi High Court, who was appointed by the order of the Division Bench on 18th September, 2012 could not continue to act as an arbitrator in view of his appointment as a Chairman of the Law Commission and is now available for arbitration work. The applicant in Arbitration Application No.223 of 2014 has already taken consent of Mr.Justice A.P. Shah, former Chief Justice of Delhi High Court, to act as the arbitrator. The applicant has already addressed a letter through his advocates to the learned advocate representing the respondents and has recommended the name of Mr.Justice A.P. Shah, former Chief Justice of Delhi High Court, to be appointed and/or re-appointed as the sole arbitrator to continue with the present arbitral proceedings and has also suggested that the parties will be able to commence arbitration from where they have left.

8. In my view, since Mr.Justice A.P. Shah, the then arbitrator appointed by the Division Bench vide order dated 18th September, 2012 is now available for arbitration work and has given his consent and in view of the fact that the proceedings had partly proceeded with

before him, it would be more appropriate if he is re-appointed as the sole arbitrator in both the matters. It is ordered accordingly.

9. It is made clear that the learned arbitrator as well as the parties shall proceed with the matter from the stage where they had left.

10. Both the arbitration applications are disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)

“Certified to be true and correct copy of original signed order.”