

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION APPLICATION NO. 307 OF 2014****Abdul Rehman Mohammed Yusuf Khan & Anr. Applicants****VERSUS****Mrs.Ramila Dineshkumar Bhatt & Ors. Respondents**

Mr.Deepak Chitnis, i/b. M/s.Deepak Chitnis-Chiplunkar & CO. for the Applicants.

Mr.S.U.Kamdar, Senior Advocate, a/w. Ms.M.V.Thakkar, i/b. V.G.Shukla for the Respondents.

CORAM : R.D. DHANUKA, J.**DATED : 26th JUNE, 2015****P.C.**

By this application filed under section 11(6) read with section 15(2) of the Arbitration and Conciliation Act, 1996, the applicants seek appointment of sole arbitrator in substitution of the learned arbitrator Mr.Rajiv Kumar, senior advocate who has resigned.

2. By an order dated 19th April, 2002, the learned designate of the Hon'ble Chief Justice in Arbitration Petition No.223 of 2001 filed by the applicants herein appointed Shri Justice V.D.Tulzapurkar, former Judge of the Supreme Court as the sole arbitrator. On demise of the learned arbitrator, by an order dated 3rd October, 2005, the then Chief Justice of this court appointed Mr.Rajiv Kumar, senior advocate as the sole arbitrator.

3. Mr.Rajiv Kumar, learned senior counsel however resigned by his letter dated 28th October, 2013 due to the reasons recorded in the said letter.

4. The applicants thereafter issued a notice on 2nd August, 2014 to the

respondents for appointment of an arbitrator in the vacancy having arisen in view of the resignation of Mr.Rajiv Kumar. The respondents did not appoint any arbitrator. The applicants thus filed an application under section 11 read with section 15 for appointment of a substituted arbitrator. In view of the objection raised by the respondents that the applicants had not followed the procedure under the arbitration agreement, the applicants withdrew the said application and after issuing notice to the respondents filed this application under section 11 read with section 15 of the Arbitration and Conciliation Act.

5. Mr.Kamdar, learned senior counsel appearing for the respondents submits that even according to the applicants, the arbitration agreement dated 12th September, 1997 has been substituted by a supplemental deed of partnership dated 13th November, 1998. He submits that in view of the separate arbitration clause in the said supplemental deed of partnership, no arbitrator shall be appointed by the designate of the Hon'ble Chief Justice in this application.

6. In my view the present application filed under section 11(6) read with section 15 is for appointment of a substitute arbitrator in place of vacancy having arisen in view of Mr.Rajiv Kumar, senior advocate tendering resignation. It is made clear that the appointment today made is in furtherance of the order passed by the designate of the Hon'ble Chief Justice in the order dated 19th April, 2002 and order dated 3rd October, 2005.

7. Mr.Gaurav Joshi, senior advocate is appointed as the sole arbitrator in place of Mr.Rajiv Kumar, learned senior advocate.

8. Arbitration application is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]