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

ARBITRATION APPLICATION NO.29 OF 2015

M/s.Menorah Associates	...Applicant
V/s.	
M/s.S.D. Corporation Pvt. Ltd. & Anr.	...Respondents

Mr.Pankaj Sutar with Ms.Ketki Gadkari for the Applicant.

Mr.Ashish Kamat i/b Desai Desai Carimjee & Mulla for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 29TH JULY, 2015.

P.C. :-

1. By this application under under section 11(6) of the Arbitration & Conciliation Act, 1996, the applicant seeks an appointment of the sole arbitrator by invoking arbitration clause no.24 of the work orders dated 31st August, 2007 and 3rd September, 2007. Dispute arose between the parties. The applicant invoked arbitration agreement by issuing a notice on 15th July, 2014, followed by reminder dated 25th August, 2014. There was no response to the said notice from the respondent.

2. The arbitration application is opposed on the ground that the claims of the applicant is barred by law of limitation. Learned counsel for the applicant states that the claims of the applicant are not

barred by law of limitation. Both the parties have relied upon some of the correspondence in support of their rival submissions annexed to the arbitration application.

3. In my view, on perusal of the correspondence annexed to the arbitration application and the pleadings in this application, it is not possible to decide the issue of limitation conclusively and the said issue is kept open. The plea of limitation being a mixed question of fact and law, the learned arbitrator can decide the same after pleadings are filed by both the parties. It is made clear that if any application under section 16 of the said Act is made by the respondent raising the plea of limitation as an issue of jurisdiction, the learned arbitrator shall decide the same in accordance with law and on its own merits.

4. Shri Justice S.K. Shah, former Judge of this Court is appointed as the sole arbitrator.

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

(R.D. DHANUKA, J.)