

**Application No.1276 of 2015  
in O.P.No.580 of 2013**

**M.M.SUNDRESH,J.**

A detailed order was passed by this Court on 16.02.2015 appointing the learned Arbitrator, after going into the relevant materials. Now this application has been filed by the respondent in O.P.No.580 of 2013 on the ground that the said order will have to be set aside since he has not been heard.

2.The learned Senior Counsel appearing for the applicant/respondent in O.P.No.580 of 2013 submitted that the entire claim is sought to be adjudicated at the hands of the Arbitrator. Since the dispute has been settled and acknowledged by the applicant and the claim being stale, there is no necessity to appoint an Arbitrator. Reliance has been placed on the decision rendered in **NATIONAL INSURANCE COMPLANY LIMITED V. BOGHARA POLYFAB PRIVATE LIMITED ((2009) 1 Supreme Court Cases 267)**.

3. On the earlier occasion,"the continued absence of the petitioners/respondents herein" is duly noted and thereafter, based upon

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the relevant materials the order was passed by this Court. In the said order, the factum of the appointment of the earlier Arbitrator was also noted. In the decision referred to supra, the Supreme Court has held that the issue of stale claim either be considered by the Court or the Arbitrator, as the case may be.

4. Considering the ratio laid down therein and applying the same to the facts of the present case and particularly, the fact that on the earlier occasion also a learned Arbitrator was appointed, this Court is not inclined to interfere with the earlier order passed by this Court. All the issues are left open including the claim made by the respondents herein is stale or not. Accordingly, this application stands dismissed.

**06.03.2015**

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