

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.56 OF 2016
IN
ARBITRATION APPEAL NO.24 OF 2016**

Mr. Baban Piraji Ghadge Applicant
(Ori. Respondent)

In the matter between

Mr. Amit Jayant Sheth & Anr. Respondents
(Ori. Appellants)

Vs.

Baban Piraji Ghadge Appellant

Mr. Abhishek Pungliya, Advocate for the Applicant in C.A. No. 56 of 2016 and for the respondent in ARA NO. 24 of 2016.

Mr. Nachiket V. Khaladkar for the respondent in CA No. 56 of 2016 and for the applicant in ARA No. 24 of 2016.

Coram : Smt. R.P. SondurBaldota, J.

Date : 26th October, 2016

P.C.

1 The appeal in which the present Civil Application is taken out arises out of Civil Misc. Application No. 503 of 2016 filed by the respondent under Section 9 of the Arbitration and Conciliation Act in the District Court, Pune. By the present Civil

Application, the respondent seeks leave to withdraw the same with liberty to adopt/pursue appropriate remedy. Mr. Pungliya, the learned advocate for the respondent submits that by the appropriate remedy, the respondent means filing an application for interim relief by invoking arbitration under the agreement dtd. 10th December, 2013. The present appeal arises out of the arbitration agreement dtd. 30th November, 2014. In that case, the respondent can file fresh application irrespective of the leave sought in the present civil application. In any case by withdrawal of the application under Section 9 of the Arbitration Act, the appellant in the appeal cannot be prejudicially affected. Therefore there can be no difficulty in granting the application. Hence, the Civil Application is allowed. The applicant is permitted to withdraw the Civil Misc. Application No.503 of 2016 pending in the District Court, Pune with liberty to file similar application by invoking arbitration clause in deed of partnership deed dtd. 10th December, 2013. The Civil Application is disposed off. Needless to state that all the contentions of both the sides on invocation of arbitration and the application under Section 9 of the Arbitration Act are left open.

2 In view of withdrawal of the Civil Misc. Application, the present appeal does not survive. The same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J)