

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 1009 OF 2016****Khemchand Bhojraj Fagwani****..... Petitioner****VERSUS****Suresh M. Shroff & Anr.****..... Respondents**

Ms.Mallika Tally, i/b. S.Mahomedbhai & Co. for the Petitioner.

Ms.Riddhi Rana, i/b. Mr.Dhiren Shah for the Respondent no.1.

Ms.Sonal, a/w. Mr.Deepak Singh, Mr.Virendra Pereira, i/b. Divya Shah Associates for the Respondent no.2.

CORAM : R.D.DHANUKA, J.**DATE : 24th NOVEMBER, 2017****P.C.**

By this petition filed under section 15 of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of the substitute arbitrator in view of the erstwhile arbitrator having withdrawn from the office for the reasons recorded in the letter dated 1st July, 2014.

2. The petitioner thereafter issued a notice to the respondents to appoint a substitute arbitrator vide notice dated 10th October, 2014. The said notice was responded by the respondent no.2 vide reply dated 5th November, 2014. In paragraph (25) of the reply, the respondent no.2 contended that in view of the several adjournments and extensions, of the arbitral proceedings the respondent no.2 has spent enormous amounts of money, time and energy, however he is still willing to approach the erstwhile arbitrator to re-commence and conclude the

arbitration proceedings. The respondents refused to accept the name suggested by the petitioner in the letter which was replied by the respondent no.2.

3. Learned counsel for the respondent no.2 submits that the disputes between the parties do not survive at all and no purpose would be served by appointing a substitute arbitrator under section 15 of the Arbitration and Conciliation Act, 1996.

4. Whether the dispute between the parties survives or not, such issue can be raised by the respondents if not raised so far before the learned the substituted arbitrator. This court cannot decide that issue in this application filed under section 15 of the Arbitration and Conciliation Act, 1996.

5. At this stage, the parties have agreed to appoint Shri Justice V.M.Kanade, former Judge of this Court as a sole arbitrator in place of the erstwhile arbitrator. Statement is accepted. Shri Justice V.M.Kanade, former Judge of this court is appointed as a sole arbitrator in place of the erstwhile arbitrator. The parties have agreed to proceed with the arbitral proceedings before the learned arbitrator from the stage it was before the erstwhile arbitrator and have assured the court that no adjournments would be sought by any of the parties. The assurance given by the learned counsel for the parties is accepted.

6. The arbitration petition is disposed of in the aforesaid terms. No order as to costs.

(R.D.DHANUKA, J.)