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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION (L) NO. 138 OF 2017**

K.S. Chamankar Enterprises	...Petitioner
<i>Versus</i>	
Prime Builders & Developers & Anr	...Respondents

Mr Cyrus Ardeshir, *with Rahul Dworkadas & J Diwan, i/b Veritas Legal, for the Petitioner.*

Mr Ankit Lohia, *with Sanaya Dadachanji & Komal Khushalani, i/b M/s Manilal Kher Ambalal & Co, for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 18th April 2017

PC:-

1. Heard Mr Ardeshir for the Petitioners and Mr Lohia for the Respondents on, incredible though it is, Mr Ardeshir's application for withdrawal.

2. Mr Ardeshir seeks to withdraw the Arbitration Petition. He also seeks liberty to file a fresh Arbitration Petition. The reason he gives, though unsupported by an Affidavit, is that after the filing of this Petition, the Petitioner found a large volume of material that had earlier escaped its attention. Mr Ardeshir candidly states that there was an action instituted by the Enforcement Directorate and

his client' records were in considerable disarray. The Petition would, in his submission, either require a substantial amendment, with possible inconvenience to all sides, not least of all the Court, or leave to withdraw with liberty to file a fresh petition with all the material. He says that it is for these reasons alone that the Petitioners have been advised to seek a withdrawal with liberty to file a fresh proceeding.

3. To my very great surprise, the application is most vigorously opposed by Mr Lohia for the Respondent. He says no such liberty should be granted. No notice was given to the Respondent that the Petitioners would apply for such liberty and no ground has been made out under Order 23 Rule 1(3)(a) or (b) for granting the Petitioner any such leave.

4. The submission as regards sub-clause (a) is misconceived. There is no question of a formal defect. What the argument overlooks almost entirely is the wording of sub-clause (b). The sufficiency of ground in said Clause (b) is a matter between the Petitioner and the Court. What Mr Ardeshir says is correct. It is also necessary to prevent multiple proceedings: there would then have to be an application for amendment which might or might not be contested, followed by further affidavits and so on, thus only resulting in greater delay. There is no possible prejudice to the Respondents since there is no ad-interim order nor does Mr Ardeshir seek any such order today. Had there been any such order, this would have been a factor in Mr Lohia's favour. It is also not argued that the liberty sought should be refused on account of anything stated in the Affidavits in Reply.

5. This is quite apart from the fact, as Mr Ardeshir points out that Order 23 Rule 3 may not have any application at all to a Petition under Section 9 of the Arbitration & Conciliation Act 1996.

6. In any case, the Respondents' interests can be sufficiently protected by leaving all contentions open. Mr Ardeshir does not suggest that any arguments from the Respondents should be foreclosed, and quite rightly so.

7. The opposition is without substance.

8. The Arbitration Petition is dismissed as withdrawn with liberty to file a fresh Petition for the same reliefs and on the same cause of action. All rights and contentions are specifically kept open on both sides.

9. Now the Respondent presses for costs. Costs must, however, be reasonable. Since today is 18th April and having due regard to the merits of the opposition, it is reasonable to award costs in the sum of Rs. 184/-. These are payable by account payee cheque only by the Advocates for the Petitioners to the Advocates for the Respondents. The costs are to be paid within six months from today and are subject to deduction of tax at source, if applicable.

(G. S. PATEL, J.)