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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ARB.P. 476/2012 & IA No. 767/2015**

SULEKH AGGARWAL ..... Petitioner
Through: Mr. Vishwendra Verma with Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent
Through: Ms. Manju Bhagat, Advocate.

With
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\+ **ARB.P. 209/2015 & IA No. 24037/2015**

SULEKH AGGARWAL ..... Petitioner
Through: Mr. Vishwendra Verma with Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent
Through: Ms. Manju Bhagat, Advocate.

With
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\+ **ARB.P. 210/2015 & IA No. 24036/2015**

SULEKH AGGARWAL ..... Petitioner
Through: Mr. Vishwendra Verma with Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent

Through: Ms. Manju Bhagat, Advocate.

With

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\+ **ARB.P. 211/2015 & IA No. 24035/2015**

SULEKH AGGARWAL ..... Petitioner

Through: Mr. Vishwendra Verma with
Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent

Through: Ms. Manju Bhagat, Advocate.

With

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\+ **OMP 352/2012 & IA 13904/2016**

SULEKH AGGARWAL ..... Petitioner

Through: Mr. Vishwendra Verma with
Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent

Through: Ms. Manju Bhagat, Advocate.
Mr. Anuj Aggarwal, ASC, GNCTD for Applicant in IA No. 13904/2016.

With

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\+ **OMP 353/2012**

SULEKH AGGARWAL ..... Petitioner

Through: Mr. Vishwendra Verma with
Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent
Through: Ms. Manju Bhagat, Advocate.

With

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+ **OMP 354/2012**

SULEKH AGGARWAL ..... Petitioner
Through: Mr. Vishwendra Verma with
Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent
Through: Ms. Manju Bhagat, Advocate.

And

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+ **OMP 355/2012**

SULEKH AGGARWAL ..... Petitioner
Through: Mr. Vishwendra Verma with
Mr. Yogesh Rathi, Advocates.

versus

SHIV ASTHA CONSTRUCTION COMPANY LTD ..... Respondent
Through: Ms. Manju Bhagat, Advocate.

CORAM: JUSTICE S.MURALIDHAR

O R D E R

% **16.01.2017**

1. A detailed order was passed by this Court on 23rd April, 2015 in which it sets out the background facts as well. The said order reads as under:

“1. Mr. Sulekh Aggarwal, a resident of Pitampura in Delhi first approached this Court by filing four petitions under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') i.e. OMP No. 352/2012, 353/2012, 354/2012 & 355/2012 seeking interim reliefs against Shiv Astha Construction Company Ltd. through its Director, Mr. Anil Kukreja.

2. In the said four petitions Mr. Aggarwal stated that four agreements to sell and purchase were executed by him and the Respondent on 25th August 2011 in terms of which the Respondent agreed to sell to the Petitioner the following four properties located at Central Technology Park, G.T. Kamal Road, Bhalgarh, Sonepat, Haryana;

a) Unit No. 27, 28, 29, 30 &31, Ground Floor, measuring 2965 Sq. Ft. approximately@Rs.3,500/- per Sq. Ft.
b) Entire Basement, measuring 15000 Sq. Ft. approximately, @ Rs. 1,000/-, per Sq. Ft.
c) Unit No. 01, Ground Floor, measuring 1750 Sq. Ft. approximately @ Rs.3,500/- per Sq. Ft.
d) Unit No. 68, First Floor, measuring 405 Sq. Ft. approximately @ Rs. 1.750/-per Sq. Ft.

3. The case of Mr. Aggarwal was that he paid the Respondent the entire consideration of Rs. 3.22 crores and was given possession of the aforementioned properties. Along with the petitions, Mr. Aggarwal filed photocopies of the said four agreements to sell along with photocopies of stamped receipts executed by Mr. Kukreja on behalf of the Respondent purportedly acknowledging payment of the sale consideration.

4. According to Mr. Aggarwal, the Respondent assured him that sale deeds in respect of the properties will be executed within a reasonable period. However, the Respondent failed to do so. Mr. Aggarwal issued a legal demand notice dated 5th December, 2011 calling upon the Respondent and Mr. Kukreja to come forward to execute the Sale Deeds. By a reply dated 15th December, 2011 the Respondent denied the allegations. It was stated that m terms of a Memorandum of Understanding ('MOU') dated 27 July, 2011 the Petitioner had agreed

to advance to the Respondent a loan of Rs.2 crores with interest which was to be disbursed in instalments. The loan was for the purpose of construction which the Respondent was undertaking. As security for the loan, the Respondent had to give collateral and had therefore given some blank signed papers to the Petitioner. The Respondent denied having executed any agreement to sell or having received Rs.3.22 crores as alleged by the Petitioner for any sale of the properties. According to the Respondent he received only Rs.20 lakhs in cash on 9th August, 2011. The Respondent alleged that the four agreements to sell were forged documents.

5. On 19th January, 2012 a further demand notice was sent by Mr. Aggarwal to the Respondent, this time invoking the Arbitration clause in the agreements to sell. The Petitioner nominated a sole Arbitrator and sought the consent of the Respondent for the said appointment.

6. It appears that Mr. Kukreja as Director of the Respondent, filed Civil Suit No. 16 of 2012 in the Court of the Senior Civil Judge, Rohini Courts, Delhi against Mr. Aggarwal praying inter alia for a permanent and mandatory injunction to restrain Mr. Aggarwal and his nominees "from using the forged and fabricated documents dated 25.08.2011 or acting upon the basis of the said agreements dated 25.08.2011 many manner in future".

7. It was at that stage that Mr. Aggarwal filed the four petitions under Section 9 of the Act praying *inter alia* for an order to restrain the Respondent from selling, transferring or interfering with the Petitioner's possession of the suit properties during the pendency of the Arbitration proceedings. In the said four petitions the court initially passed an interim order on 16th April, 2012 directing the Respondent to maintain status quo in relation to the properties till the next date. The Respondent filed a reply *inter alia* contending that the four agreements dated 25th August 2011 were forged documents. The Respondent enclosed with its reply a forensic report of Mr. B.N. Srivastava to the effect that the signatures on the agreements were not that of Mr. Kukreja. The Court in its order dated 6^ August 2012 noted that "Learned counsel for the Petitioner states that he will produce before the Court the original of the agreement dated 25*

August 2011" The court vacated the interim order dated 16* April 2012.

8. Mr. Aggarwal thereafter filed Arbitration Petition No. 476/2012 seeking appointment of an Arbitrator. Notice was issued in the petition to the Respondent by order dated 6* February, 2013.

9. It appears that two sets of criminal proceedings were in the meanwhile initiated by one party against the other. Mr. Kukreja got registered FIR No. 287/2013 at PS Parshant Vihar alleging that Mr. Aggarwal had forged his signatures on the agreements dated 25* August, 2011. He maintained that he only took a loan of Rs.20 lakhs from Mr. Aggarwal and signed security papers along with certain blank papers. The investigation of the said FIR was entrusted to Sub Inspector (SI) Bhagat Ram, AFS/EOW/Crime Branch who filed a Status Report in the Court of Mr. Devender Jangala, Ld CMM, Rohini Court, New Delhi. Copies of the said FIR and the Status Report filed therein have been placed on record. Inter alia in the said Status Report it is stated by SI Bhagat Ram as under:

> "It is further submitted that during course of enquiry the alleged Sulekh Aggarwal was examined who disclosed that he further sold the disputed land to other seven persons namely: Rajender Chabra, Ram Kumar, Julfekar, Mukesh Kumar, Manoj Singhal, Mehar Singh, Maha Singh, for Rs. 3,22,11,550/- and same money was paid to Anil Kukreja.
>
> One of buyers of disputed land, Mukesh Kumar was examined who stated that he purchased a shop of Rs.25,00,000/- and executed a bayana Receipt. He had paid money in cash to Sulekh Aggarwal. He did not produce any Income Tax Return stating that it was an agricultural income. Rajender Chabra, who also purchased the disputed land from Sulekh Aggarwal, did not join enquiry despite he has been served Notice to join the enquiry.
>
> Sincere efforts were made to examine other buyer Sh. Ram Kumar, S/o Sh. Puran Chand, R/o Patti, Kayash Seth,

Kaithal, Haryana but he could not be examined. Sulekh Aggarwal did not mention the complete Address of Ram Kumar in his reply."

10. In the petition filed by Mr. Aggarwal under Section 156 (3) Cr. P.C. before the Court of Ld. MM Abhilash Malhotra, Rohini Courts, Delhi, SI Yogesh Raj, PS. Prashant Vihar, New Delhi a Status Report was submitted on 29th September, 2014. Inter alia he stated therein that during the course of investigation all four agreements dated 25th August, 2011 in original were collected from this Court for forensic analysis. All the original documents were shown to Mr. Kukreja. He has reported to have stated that "some of his signatures are forged but he cannot identify which are forged and genuine". He nevertheless stated that his signatures on the receipts were forged. The report also states that the original documents along with the admitted and specimen signatures of Mr. Kukreja were deposited in the Forensic Sciences Laboratory (FSL), Rohini. The FSL report dated 8th July, 2014, a copy of which was enclosed with the Status Report revealed that the signature on the four agreements of Mr. Kukreja matched with his specimen and admitted signatures. As regards the four receipts one signature in each page had matched. The witnesses to the agreements also supported their signatures.

11. In its order dated 5th November, 2014 the Court noted the above facts and also the stand of the Respondent in relation to the documents on record. Paragraph 5 of the said order reads as under:

> "I have ascertained from the learned counsel for the respondent, as to what is the exact defence of the respondent company. Learned counsel for the respondent maintains that the defence *qua* these documents is that the signatures appended thereto are forged. In so far as the assertions made in paragraph 13 of the reply, referred to above, are concerned, learned counsel for the Respondent says that signatures appended on blank documents do not pertain to documents which are in issue in the present matter. He further says on the say so of the representatives of the respondent company, that the, concerned Deputy Commissioner of Police (DCP) has sent the documents in issue

> in the present case for further analysis to two forensic laboratories, one located at Hyderabad and the other in Chandigarh."

12. In the same order dated 5 November 2014, the Court directed both counsel to place on record the report of the FSL and the decisions of the concerned courts. Counsel for Petitioner undertook to file separate arbitration petitions with respect to each of the agreements. Consequent thereto, today three fresh arbitration petitions have been listed being Arb. Petition Nos. 209/2015, 210/2015 and 211/2015.

13. During the course of the hearing today it was urged by Ms. Ekta Sikri, the learned counsel for the Petitioner, on the strength of the decision of the Supreme Court in ***Bharat Rasiklal Ashra v. Gautam Rasiklal Ashra (2012) 2 SCC 144*** that this Court will have to given a definite opinion on whether the agreements in question containing the arbitration clause are valid. According to her, the report of the FSL confirming the genuineness of the signatures of Mr. Kukreja on the agreements is sufficient for this Court to proceed to uphold the validity of the agreements and appoint the Arbitrator. She further submitted that the Respondent should not be permitted to take contradictory stands i.e. on one hand contend that the signatures of Mr. Kukreja are forged and on the other that his signatures were taken on blank papers which were then used to prepare the agreements.

14. Mr. Krishnendu Datta, learned counsel for the Respondent, on the other hand relied on the decisions in ***N. Radhakrishnan v. Maestro Engineers (2010) 1 see 72, India Household and Healthcare Ltd, v. LG Household and Healthcare Ltd, (2007) 5SCC510*** and ***Cogent Ventures (India) Ltd, v. Raj Karan (Through L.Rs.) 2012(1) Arb.LR 305(Del)*** and urged that this Court should decline to examine complicated questions involving allegations of forgery and fabrication in these proceedings. He also submitted that the Respondent having filed a civil suit m which these questions would be examined after parties lead evidence, the present proceedings were not appropriate for conducting that exercise. He also submitted that any decision on these aspects would also adversely impact the outcome of the criminal proceedings initiated by one party against the other. Mr. Datta

submitted that the Respondent should have an opportunity to question the FSL report dated 8th July, 2014 by cross examining the author of the said report and also lead expert evidence to contradict the said report. Without prejudice to the above submissions, Mr. Datta submitted that if the case of the Petitioner was that it had obtained possession under the four agreements, then obviously the said agreements cannot be acted upon by the Court since they were inadequately stamped and not registered. Mr. Datta also pointed out that LA. 767/2015 have been filed seeking clarification of the order dated 5th November, 2014 in which notice was directed to be issued on 2nd January, 2015.

15. In ***Bharat Rasiklal Ashra Vs. Gautam Rasiklal Ashra*** (supra), the Supreme court appears to have negatived the plea that if an application under Section 11 of the Act requires allegations of forgery, fabrication etc. to be examined, the Court cannot avoid undertaking that exercise. It observed under:

> "16. The learned counsel for the first respondent next submitted that if the Chief Justice or his designate is required to examine the allegations of fabrication and forgery made by a party in regard to the contract containing the arbitration agreement, before appointing an arbitrator under Section 11 of the Act, the proceedings under the said section will cease to be a summary recording of evidence, thereby defeating the object of the Act. In our considered view this apprehension has no relevance or merit. Existence of a valid and enforceable arbitration agreement is a condition precedent before an arbitrator can be appointed under Section 11 of the Act. When serious allegations of fraud and fabrication are made, it is not possible for the court to proceed to appoint an arbitrator without deciding the said issue which relates to the very validity of the arbitration agreement. Therefore, the fact that the allegations of fraud, forgery and fabrication are likely to involve recording of evidence or involve some delay in disposal, are not grounds for refusing to consider the existence of a valid arbitration agreement." **(emphasis supplied)**

16. In the present case, the FSL report dated 8th July 2014 appears to confirm the signatures of Mr. Kukreja on the four agreements. However, the Respondent asserts the right to cross-examine the author of the report and also lead other expert evidence in that regard.

17. However, in view of what has been stated in the Status Report filed in FIR 287/2013, the Court would like to be satisfied that the complete facts which are necessary for the Court to arrive at a proper conclusion are before it. There are certain aspects of the transactions which require to be clarified by the Petitioner. According to the Petitioner, the entire payment of the sale consideration to the extent of Rs.3.22 crores was made to the Respondent in cash and possession of the immovable properties in question was obtained. The Petitioner did not consider it appropriate to have the documents registered. Be that as it may, the sources of the Petitioner's finances are unclear. Does he have a PAN number? Does he regularly file income tax returns? Also has he himself purchased the properties or has he done so on behalf of others? Who is actually in possession of the properties today? The Court would not like to proceed in the matter of this nature without satisfying itself that the transactions in respect of which it is expected to take a decision are in fact genuine.

18. Accordingly, the Petitioner is directed to file an affidavit within four weeks, with an advance copy to the counsel for the Respondent, on the following aspects:

a) Whether the entire sale consideration was paid by the petitioner to the Respondent in cash, what was the amount and what were the financial resources of the Petitioner for making such payment?

b) Does the Petitioner file regularly his income tax returns and what is his PAN number?

c) Whether the Petitioner disclosed the financial transactions in question and the fact of his getting the immoveable properties thereby in the income tax returns filed for the relevant financial year?

d) The copies of all the updated statements of bank accounts of the Petitioner for that relevant period and subsequent thereto till now, and the copies of the income tax returns if any of the Petitioner for the past four years be enclosed with the affidavit.

e) Whether there are any other parties involved in these transactions? The full names and current addresses of all such persons with whom the Petitioner has transacted in connection with the properties be disclosed.

f) Whether in fact the Petitioner is himself in actual physical possession of the properties in question and if not, to whom he has handed over the possession and under what documentation? Copies of such documents be enclosed with the affidavit.

19. The Court clarifies that it has not expressed any opinion in respect of the contentions of the parties and would like to await the affidavit of Mr. Aggarwal on the above aspects before proceeding in the matter.

20. Meanwhile notices be sent to both (SI) Bhagat Ram, FS/EOW/Crime Branch who is investigating FIR 287 of 2013 in PS Prashant Vihar and SI, Yogesh Raj, PS Prashant Vihar enclosing copies of this order and requiring each of them to inform the Court of the present status of the cases entrusted to them for investigation.

21. List on 12th August, 2015."

2. Pursuant to the said order, an affidavit was filed by the Petitioner on 18th July, 2016 along with certain annexures. Thereafter the Court had on 11th August, 2016 passed the following order:

> "Short affidavit has been filed in sealed cover. An adjournment is sought on behalf of the Petitioner which is not opposed by the learned counsel for the Respondent.
>
> List on 6th October, 2016."

3. On 6th October, 2016, the Court directed the Registrar (Original) to make copy of the affidavit alone and not the annexures thereto and hand over the copy of the affidavit (without the annexures) to the counsel for the Respondent.

4. Meanwhile, an affidavit dated 5th October, 2016 was filed by Mr. Anil Kukreja placing certain documents. *Inter alia* a reference has been made to an order dated 29th July, 2016 passed by the Metropolitan Magistrate ('MM')-4 (North), Rohini Courts, Delhi in which it was stated that the agreement-cum-bayana receipt which is the subject matter of both the said proceedings as well as FIR No. 287 of 2013 registered at Police Station Preet Vihar which is also the subject matter of these petitions would require forensic examination by the Forensic Scientific Laboratory ('FSL'). The learned MM appears to have ordered for re-investigation in the matter.

5. It is perhaps as a result of the said order that a fresh application being IA No. 13904 of 2016 in OMP No. 352 of 2012 by the Investigating Officer ('IO'), Samarpal, who is the IO of the Economics Offences Wing ('EOW') seeking release of the four agreements dated 25th August, 2011 was filed.

6. There is no opposition to IA 13904 of 2016 and for the reasons stated therein, this application is allowed. The Registry is directed to retain the photocopies of each of the original agreements dated 25th August, 2011 as

well as a copy of this application i.e., IA No. 13904/2016 and hand over the originals to Mr. Samarpal, IO, of the Economics Offences Wing who will collect them in person. A proper acknowledgment from Mr. Samarpal be taken and kept on file.

7. Learned counsel for the Petitioner repeatedly stressed that the Court should appoint an Arbitrator and refer all the questions including the question concerning the genuineness and validity of the agreements in question for the decision of the learned Arbitrator. Alternately, he prays for some more time to file further documents to demonstrate the facts of the case. He points out that the FSL has already submitted a report confirming the signature of Mr. Kukreja on the various documents including the agreements to sell and receipt thereof. He further relied upon documents submitted by Mr. Kukreja and submitted out that it is, in fact, Mr. Kukreja who is being dishonest and not the Petitioner.

8. In the petitions under Section 11 of the Act, it is for the Petitioner to come with all clear facts and demonstrate, in particular where a challenge is laid in that behalf, that the agreements on the basis of which the prayer for appointment of an arbitrator is made are *prima facie* genuine.

9. As the orders passed by this Court from time to time reveal, there has been a very serious dispute raised about the genuineness of the agreements themselves. The Respondent has denied his signatures on the agreements and further contended that the agreements themselves are fabricated and forged.

10. This led the Court to pass a series of orders including reference of the disputable documents for examination by the FSL. At one stage after the receipt of the reports of the FSL, the Court in order to be satisfied about the bonafides of the Petitioner, in particular the source of his income, passed a detailed order in that regard on 23rd April 2015.

11. In the affidavit filed in response to the Court's order dated 23rd April, 2015 (incidentally the affidavit has been filed after more than one year i.e., on 18th July, 2016), the Petitioner claimed that the total sale consideration paid to the Respondent was Rs. 3.22 crores and was obtained from the following persons:

"Name	Amount
Late Sh. Manoj Singhal r/o 2, National Road, Laxman Chowk,Dehradun (Uttarakhand)	Rs. 25,00,000/-
Mr. Vedprakash s/o Rameshwar r/o Vill : Wali Brahaman, Tehsil: Gohana, District Sonepat, Haryana	Rs. 1,03,77,500
Mukesh Kumar, s/o Vedprakash, r/o Vill: WaliBrahaman, Tehsil: Gohana, District Sonepat, Haryana	Rs. 25,00,000
Mehar Singh s/o Banwari Singh r/o Vill: Lalheri, Tehsil: Ginnor, District: Sonepat, Haryana	Rs. 50,00,000
Zulfikar s/o Idrish Ahmed r/o Vill: Sankara Tehsil: Bilaspur, District: Rampur, Uttar Pradesh	Rs. 61,25,000

Rajender Chhabra, Advocate, Supreme Court of India, C-25, New Moti Nagar, New Delhi.	Rs. 7,08,750
Maha Singh s/o Dhoop Singh, Village: Garhikhejua Tehsil, Samalkha, Haryana	Rs. 50,00,000
Total	Rs. 3,22,11,250

12. Interestingly, the Petitioner does not mention when each of the persons gave the said sum. The Petitioner does not mention whether he issued them any receipt for such payment. The Court is *prima facie* not satisfied with the reply given by the Petitioner as regards the source of his income. Although he has enclosed with the affidavit his bank account statements and claims that he has been filing income tax returns on regular basis, the Court is of the view that a fresh detailed investigation is required in this regard.

13. The question that arises is whether the Court should appoint an Arbitrator and refer all the questions to the Arbitrator as prayed for by the Petitioner or should the Court decline it given the nature of dispute that has arisen and as mentioned in its order dated 23rd April, 2015. IN the latter order the Court has already extracted the passage from the decision of the Supreme Court in ***Bharat Rasiklal Ashra Vs. Gautam Rasiklal Ashra (2012) 2 SCC 144*** where it was stated that the mere fact that the allegations of fraud, forgery, fabrication are likely to involve recording of evidence or involve some delay in disposal, "are not grounds for refusing to consider the existence of a valid arbitration agreement."

14. However, there are limits to the extent to which a Court can undertake

such exercise in a petition under Section 11 of the Act. Given that arbitration itself is supposed to be an efficacious remedy, if even at the stage of appointment of arbitrator, the Court is going to have to take evidence and satisfy itself that the agreements in question are not forged or fabricated as alleged by the Respondent, the exercise would be complicated and time consuming thus defeating the very object of the Act.

15. In the present case, the arbitration petition was first filed by the Petitioner in 2012. Even by the end of 2016 there is no clarity on whether the agreements and receipts in question were forged and fabricated. The disputes between the parties also include two criminal cases where the investigation is still going on. The Court of the MM is far better equipped to deal with the issues arising out of the FSL report and to examine in great detail the evidence that emerges. Likewise, in a civil Court, there would be scope for examination of exhibits and prepare the scientific forensic report to provide an opportunity to the Respondent to cross-examine such witnesses.

16. No doubt, in terms of the Act as amended with effect from 23rd October 2015 the Court is expected to proceed to appoint an Arbitrator if there is in fact valid arbitration agreement. On the other hand, there might be miscarriage of justice if the Court proceeds to leave all the complicated questions to be decided only by the Arbitrator. In the first instance, the Court must be satisfied that the agreements already entered to are genuine documents. The Court is unable to be *prima facie* satisfied, on the basis of the documents placed on record, that the agreements are in fact genuine.

17. In that view of the matter, the Court declines to accept the prayer for appointment of an Arbitrator. Considering that the petition has been pending for a considerable number of years in this Court seeking appointment of an Arbitrator, this fact would be taken note of by the concerned Court on an appropriate plea made by the Petitioner.

18. Since the Court declines to appoint an Arbitrator, the question of any orders under Section 9 of the Act continuing does not arise. All these petitions are, accordingly, disposed of leaving all the parties to urge their respective contentions in other appropriate proceedings in accordance with law. Nothing stated in this order should be taken to be an opinion by the Court on the rival contentions of the parties.

19. The affidavit on behalf of the Petitioner and its annexures will be re-sealed and kept by the Registrar (Original).

20. The matter be placed before the Registrar (Original) on 24th January, 2017 for this purpose.

21. The petitions and the pending applications are disposed of in the above terms.

22. Order be given *dasti.*

S.MURALIDHAR, J

JANUARY 16, 2017/*Rm*