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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO.1281 OF 2018

Joy Builders	..Petitioner
Vs.	
Smt. Mayadevi Shubhkaran Makharia & Ors.	..Respondents

Ms.Meena Bhatta i/b. M/s.Jhangiani Narula & Associates for Petitioner.
Mr.Ashok Pande i/b. Mr.Mukesh Kumar Mishra for Respondent No.1.
Mr.J.S. Shukla i/b. M/s.Vaibhav Mehta & Associates for Respondent No.4.

CORAM : G.S. KULKARNI, J.

DATE : 7th MARCH, 2019

P.C.:

Heard learned Counsel for the parties.

2. This is a petition filed by the petitioner Joy Builders under Section 14 & 15 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) praying for substitution of the arbitrator earlier so appointed as he has resigned by an order dated 17 January 2018 passed in the arbitral proceedings. By an order dated 5 September 2011 passed by this Court in appeal No.516 of 2011 in Arbitration Petition No.389 of 2011, Hon'ble Mr. Justice S.P. Kurdukar, Former Judge of the Supreme Court, was appointed as a sole arbitrator. It is stated that the

arbitral proceedings had commenced and had substantially progressed and the petitioner's witness was being cross-examined. The learned arbitrator by the said order dated 17 January 2018 decided to resign from the arbitral proceedings. Hence, this petition making the following prayers:-

“(a) That the Hon'ble Chief Justice or any other Judge, nominated in this behalf by this Hon'ble Court, be pleased to appoint a Sole Arbitrator as a Substitute Arbitrator to replace the earlier learned Arbitrator Shri. S.P. Kurdukar, former Judge of Hon'ble Supreme Court of India, to continue the Arbitral proceedings further and adjudicate upon the disputes between the parties, under Section 11 read with Section-14 & 15 of the Arbitration & Conciliation Act, 1996.”

3. After this petition was heard for some time, learned Counsel for the parties are agreeable that the substitute arbitrator be appointed by this Court. In view of the consensus between the parties, following order is passed:-

ORDER

(i) Mr.S.K. Jain, Advocate of this Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties, subject matter of the present proceeding, in substitution of the arbitral tribunal as appointed earlier.

(ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section

12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) Learned sole prospective arbitrator shall continue the proceeding from the stage as reached by the presiding learned arbitrator. Record and Proceedings are stated to be with the learned arbitrator earlier so appointed and the same be now collected by the petitioner/claimant and be handed over to the newly appointed arbitrator;

(iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) All contentions of the parties on merits of the matter are expressly kept open;

(vi) The petition is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: 14-15 Anant Building, 217 Princess Street,
Mumbai – 400 002.

Contact Nos. 9820027097 / 9870263312.

[G.S. KULKARNI, J.]