

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

COMMERCIAL ARBITRATION PETITION NO.29 OF 2024

K. I. P. L Vistacore Infra Projects J.V.

... Petitioner

V/s.

Municipal Corporation of the City of Ichalkarnji

... Respondent

Mr. Akshay Patil a/w Akshay Kamble a/w Rajesh Devgharkar a/w Neha Patil a/w Pritesh Bodekar a/w Trupti Poojary i/by Vivaka Partners for the Petitioner.

Mr. G. S. Godbole, Senior Advocate i/b Akshay P. Shinde for the Respondent-Corporation.

CORAM : ARIF S. DOCTOR, J.

DATE : 20TH JANUARY 2025

P.C. :

1. The present Commercial Arbitration Petition has been filed under the provisions of Section 29A of the Arbitration & Conciliation Act, 1996 ('Arbitration Act') seeking an extension of the mandate of the Arbitral Tribunal appointed by this Court vide an Order dated 22nd January 2022 ("the Order of Appointment") passed in Writ Petition (St.) No. 98777 of 2020 ("the Writ Petition").

2. At the outset, it is essential to set out that this is the Second Petition filed by the Petitioner under Section 29A of the Arbitration Act for extension of the

mandate of the Tribunal. The Petitioner had earlier filed Commercial Arbitration Petition No. 181 of 2024 (“the First Petition”) which was opposed by the Respondent – Corporation on the ground of jurisdiction. Simply put, it was the contention of the Respondent – Corporation that the Arbitral Tribunal was not constituted under the provisions of Section 11(6)¹ but was constituted by consent of the Parties under Section 11(2) of the Arbitration Act and thus ‘Court’ as defined under Section 2(1)(e) of the Arbitration Act which would have jurisdiction to decide an Application under Section 29A of the Arbitration Act would be the Principal Civil Court having original jurisdiction in Kolhapur District and not the High Court.

3. This Court had, vide a detailed and reasoned Order dated 22nd January 2024 (the First Order of Extension), rejected the contentions of the Respondent–Corporation and had allowed the First Petition, *inter alia* holding as follows, viz.

“19. In the present case, it is evident that though the appointment of the Arbitrator, by the Division Bench of this Court, may not be in the circumstances contemplated either under Sub-Section (4) or Sub-Section (6) of Section 11, but it was in a Petition, when the Municipal Council agreed to the disputes being taken to Arbitrator, and for which the consent was accorded by the Petitioner, this Court exercised the power of appointing the Arbitrator.

Nonetheless, the appointment of Arbitrator is by the High Court by assuming the power under Section 11 (6) of the Act though the preceding events justifying the

1 11(6) Where, under an appointment procedure agreed upon by the parties, –

(a) a party fails to act as required under that procedure; or
 (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
 (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,
 the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] [Substituted by Act No. 33 of 2019, dated 9.8.2019.] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

exercise of power under 11(6) of the Act are not made out, reading of the order of Division Bench make it very apparent that upon the consensus being arrived between the parties that the dispute has to be taken for arbitration, the High Court appointed the Sole Arbitrator with the terms and conditions of his appointment being stipulated in the order and most important condition being it requested the Arbitrator to expeditiously conclude the proceedings within a period of one year i.e. the timeline for the arbitration proceedings was stipulated by the High Court while appointing him.

In such a scenario, it would be anomalous to consider that though the High Court has appointed the Arbitrator and defined the time line within which, he shall decide the proceedings, the application for extension of time under Section 29A shall be decided by the Principal District Court of Pune."

4. The Respondent–Corporation then filed a Special Leave Petition² ("SLP") challenging the First Order of Extension before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide an Order dated 15th March 2024 dismissed the SLP as follows:

"We are not inclined to interfere with the impugned judgment and hence, the special leave petition is dismissed.

Question(s) of law is left open.

Pending application(s), if any, shall stand disposed of."

5. Since the time granted vide the First Order of extension expired on 21st July 2024 the captioned Commercial Arbitration Petition has been filed. The Respondent – Corporation has, now once again opposed the Petition on the identical ground/s as taken to oppose the First Petition i.e. that the Arbitral Tribunal was constituted by consent of the Parties under Section 11(2) of the Arbitration Act and

2 Order dated 15th March 2024 of Hon'ble Supreme Court in Special Leave Petition (C) No. 5920 of 2024.

not under the provisions of Section 11(6) of the Arbitration Act and thus the Court as defined under Section 2(1)(e) of the Arbitration Act would be Kolhapur District Court and not the High Court.

6. However, before advertng to the rival contentions, it is useful for context to set out the following facts, viz.

- i. The Respondent–Corporation had in the year 2013 floated a tender for the proposed construction of two decentralized Sewage Treatment Plans (STP) along with other related infrastructure such as pumping stations, etc. The Petitioner had, pursuant to the tender, applied for and was awarded the work and subsequently was issued a Work Order dated 28th August 2014 by the Respondent–Corporation.
- ii. Thereafter, certain disputes and differences arose between the Parties regarding the work and/or completion of the work done by the Petitioner. It is not necessary for the purpose of the present Petition to set out the details of these disputes and differences, suffice to say that on account of certain actions/steps taken by the Respondent – Corporation, the Petitioner filed the said Writ Petition.
- iii. The Respondent – Corporation during the pendency of the Writ Petition passed a resolution dated 19th January 2019 resolving to settle the said

disputes and differences which had arisen between the Parties through arbitration, and it was thus the Order of Appointment came to be passed.

- iv. The period of one year came to an end on 28th February 2023. The Parties however by consent extended the mandate of the Tribunal and it was thus that the mandate of the Tribunal expired on 31st August 2023 which led the Petitioner to file the First Petition in which the First Order of extension was passed as I have already noted above.
- v. Since the period of six months granted by the first order of extension has expired, the present Petition is filed.

Submissions on behalf of the Petitioner

7. Mr. Patil, Learned Counsel appearing on behalf of the Petitioner at the outset submitted that the present Petition was required to be allowed since the Petitioner had made out a case of sufficient cause to extend the mandate of the Arbitral Tribunal as required under Section 29A of the Arbitration Act. He submitted that the Respondent–Corporation had, infact, except for raising the identical ground of jurisdiction, not opposed the Petition on any other ground.

8. Mr. Patil then submitted that the First Order of Extension clearly held that this Court had assumed powers under Section 11(6) of the Arbitration Act in the

appointment of the Tribunal. He pointed out that the SLP filed by the Respondent–Corporation from the First Order of Extension was also dismissed and thus the findings in the First Order of Extension were binding upon the Parties. He thus submitted that in this factual backdrop, it was now not open for the Respondent – Corporation to contend that the appointment of the Arbitrator was not as per Section 11(6) of the Arbitration Act.

9. Mr. Patil then submitted that merely because the Hon’ble Supreme Court had while dismissing the SLP left open the question(s) of law did not mean that the Respondent–Corporation could reagitate the same ground of jurisdiction in these very proceedings. He submitted that the Respondent–Corporation, was barred by the principles of ‘constructive *res judicata*’ or principles analogous to the same from once again taking the plea of jurisdiction in these proceedings. Mr. Patil then pressed for costs, since the Petition was a commercial arbitration petition and that the same was opposed on entirely meritless grounds which had not only occasioned the Petitioner to incur costs but had also wasted precious judicial time. He thus by placing reliance on the provisions of Section 35 of Code of Civil Procedure, 1908 (‘CPC’) and Section 31A of Arbitration Act submitted that costs must be granted.

10. It was thus, in the aforesaid facts that Mr. Patil submitted that the present Petition deserved to be allowed in terms of prayer clause (a).

Submissions on behalf of the Respondent–Corporation

11. Mr. Godbole, Learned Senior Counsel appearing on behalf of the Respondent – Corporation, at the outset pointed out that neither the tender floated by the Respondent – Corporation nor the Agreement/Work Order contained an arbitration clause. He then took pains to point out that the tender document infact contained a clause³ which specifically provided against arbitration. He submitted that this clause/tender condition was equally binding upon the Petitioner as it was upon the Respondent–Corporation.

12. Mr. Godbole pointed out that it was only during the course of the hearing of the said Writ Petition that the Respondent – Corporation had resolved to settle the disputes and differences which had arisen between the Parties through arbitration. He submitted that it was thus, on the basis of the said resolution that the Division Bench of this Court had in the Writ Petition passed the Order of Appointment by recording the consent of the Parties. He submitted that this Court had in passing the Order of Appointment acted only as a facilitator to the appointment of the Tribunal and nothing more. Mr. Godbole submitted that even otherwise, this Court could not have, in the absence of an Arbitration clause, either in the tender document and/or the Agreement between the Parties exercised

3 *"ARBITRATION- The disputes between Contractor and the PARISHAD will be dealt with as per provisions of Clause 30 of the B1 Form of the Contract. In case of any disputes between the parties, the decision given by the Chief Officer will be final and binding on the parties. **It is made specific here that in no case the matter shall be referred to any arbitration or conciliation or any other dispute redressal mechanism. In case of any such dispute between the parties, it shall be open for the Parties to refer the matter to the Court of Law & in such an event the dispute shall be subject to Hatkanangale Jurisdiction only.**"*

jurisdiction under Section 11 of the Arbitration Act. He submitted that the Order of appointment was also not passed by the “Judge designated” by the Hon’ble Chief Justice to hear and dispose of Petitions under Section 11 of the Arbitration Act. It was in these cumulative facts, he submitted that the Order of appointment could in no manner be construed to be an Order passed by this Court under Section 11(6) of the Arbitration Act.

13. Mr. Godbole then placed reliance upon the judgement of the Hon’ble Supreme Court in the case of *Swadesh Kumar Agarwal vs. Dinesh Kumar Agarwal and Others*⁴ and pointed out that the Hon’ble Supreme Court had *inter alia* held that an Application under Section 11(6) of the Arbitration Act was not maintainable in the absence of any written contract containing an arbitration agreement/clause. He pointed out that in the facts of the present case admittedly none of the requirements of Section 11(6) of the Arbitration Act had been fulfilled and thus the Order of Appointment could in no manner be constructed to be an Order passed under Section 11(6) of the Arbitration Act or by this Court assuming powers under Section 11(6) of the Arbitration Act.

14. Mr. Godbole then pointed out that during the course of the hearing of Writ Petition No.88 of 2024 a Learned Single Judge of this Court (Bharat Deshpande J.) had noted a divergence in the views of two decisions of this Court namely the decision in the case of *Mormugao Port Trust vs. Ganesh Benzoplast*⁵ (Dama Seshadri

4 (2022) 10 SCC 235

5 Order dated 15th January 2020 of this Court at Goa bench in Writ Petition No. 3 of 2020.

Naidu, J.) and the First Order of Extension of time (Bharati Dangre, J.). It was thus that the Learned Single Judge hearing Writ Petition No. 88 of 2024 (Bharat Deshpande, J.) referred the matter to a Larger Bench. He pointed out that the reference to the Larger Bench was thought necessary in view of the fact that the decision in the case of *Mormugao Port Trust* was not brought to the notice of the Learned Judge who passed the First Order of Extension of time.

15. He then submitted that the Larger Bench had on 7th August 2024 delivered its judgement and had answered the reference by holding in cases where an Arbitral Tribunal was constituted under Section 11(2), i.e., with the agreement and consent of the Parties, then an Application under Section 29A(4) would lie to the Principal Civil Court of Original Jurisdiction in a District, which would include the High Court in exercise of its Ordinary Original Civil Jurisdiction. He reiterated that in the facts of the present case, since the Tribunal was not constituted under Section 11(6) of the Arbitration Act, the Application for extension of the mandate of the Tribunal would lie before District Court in Kolhapur, since District Court at Kolhapur was the Principal Civil Court of original jurisdiction in the district having jurisdiction to decide the question forming the subject matter of the arbitration. He submitted that the First Order of Extension had therefore to this extent been overruled by the Larger Bench.

16. Mr. Godbole, then pointed out that the Hon'ble Supreme Court had, while dismissing the SLP, specifically kept open the question(s) of law and it was thus

that the Respondent-Corporation was entitled to raise the same. In support of his contention that the question of law having been kept open, the Respondent-Corporation was entitled to reagitate the same, he first placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Khoday Distilleries vs. Sri Mahadeshwara Sahakara Sakhare Karkhane***⁶ from which he pointed out that the SLP having been dismissed, the doctrine of merger would not apply. He then also placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***State of Rajasthan vs. Milap Chand Jain***⁷ to submit that when the Hon'ble Supreme Court keeps open a question of law, it obviously means that the same was open to be urged in a matter arising out of subsequent event in which a similar question arose. He submitted that, in the facts of the present case, since the arbitration proceedings could not be completed within the extended period, a second Petition was filed which he submitted constituted a subsequent event which entitled the Respondent-Corporation to reagitate the same.

17. Mr. Godbole then in dealing with the Petitioner's contention that the First Order of Extension would operate as *res judicata* placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Supreme Court Employees' Welfare Assn. vs. Union***⁸ to submit that a decision on a question of jurisdiction would not operate as *res judicata* in subsequent proceedings. He pointed that the Hon'ble Supreme Court had in the case of ***Canara Bank vs. N. G. Subbaraya Setty and***

6 (2019) 4 SCC 376

7 (2013) 14 SCC 562

8 (1989) 4 SCC 187

*Anr.*⁹ also taken a similar view. Mr. Godbole also placed reliance upon a decision of the Full Bench of this Court in the case of *Gauri Plasticulture P. Ltd. vs. Commissioner of Central Excise*¹⁰ and pointed out that if the Special Leave Petition was dismissed leaving question of law open then the same could be raised and equally examined by the Court and question of judicial discipline would not arise. It was thus he submitted that the question of *res judicata* would not apply.

18. Mr. Godbole then placed reliance upon a Division Bench judgement of the Andhra Pradesh High Court in the case of *Dr. V. V. Subbarao vs. Dr. Appa Rao Mukkamala And Others*¹¹ from which he pointed out that the Andhra Pradesh High Court had held that ‘Court’ in Section 29A of the Arbitration Act was not required to be given a contextually different meaning than definition of ‘Court’ as contained in Section 2(1)(e) of the Arbitration Act. He pointed out that the decision of the Andhra Pradesh High Court was delivered on 10th May 2024, whereas the decision of Larger Bench of this Court in the case of *Sheela Chowgule* had delivered its judgement on 7th August 2024. He submitted that since the judgement of the Andhra Pradesh High Court directly and substantially dealt with the issue at hand, the same was being brought to the notice of this Court.

19. Mr. Godbole submitted that the question of granting costs did not arise as the objection of lack of jurisdiction went to the root of the matter. He submitted

9 (2018) 16 SCC 228

10 (2019) 5 Bom CR 708

11 2024 SCC OnLine AP 1668

that the question of law having been specifically left open, the question of any malafides on the part of the Respondent – Corporation did not arise. He then submitted that the Respondent – Corporation was not a private party but was a statutory body and hence the request to impose the cost on the Respondent be rejected. On the contrary, he submitted that given the law laid down by the Larger Bench of this Court in the case of *Sheela Chowgule*, the Petitioner had filed the present Petition in this Court despite being aware that this Court does not have jurisdiction to extend the mandate of the Arbitral Tribunal under Section 29A of Arbitration Act. It was thus he submitted that the Petition be dismissed.

20. Mr. Patil, in rejoinder submitted that merely because the Hon'ble Supreme Court had, while dismissing the SLP, kept open the question(s) of law did not mean that the Respondent-Corporation was entitled to reagitate the same in these proceedings. He submitted that the observations made by the Hon'ble Supreme Court leaving open the questions of law would apply to any future proceeding between different Parties, in which a similar and/or same issue/question might possibly arise for consideration. He submitted that it was inconceivable that the Hon'ble Supreme Court had on the one hand dismissed the SLP, yet on the other granted liberty to the Respondent-Corporation to reagitate the very same issue which was challenged before the Hon'ble Supreme Court in the SLP. He then submitted that the interpretation of the order dated 15th March 2024 by the Respondent Corporation was infact against the fundamental policy of the Indian

Law, since finality to a litigation was the foundation of the judicial propriety and fairness.

21. He submitted that the reliance placed by the Respondent–Corporation upon the decision of the Larger Bench of this Court in the case of *Sheela Chowgule* was also plainly erroneous and misconceived. He pointed out that in the facts of the present case, it was not now open to Respondent–Corporation to contend that the Arbitral Tribunal had been appointed by consent of the Parties in view of the findings in the First Order of Extension of time, which clearly held that the Tribunal had been constituted by this Court by assuming powers under Section 11(6) of the Arbitration Act. He submitted that in fact the decision of the Larger Bench in view of the answer to the first question framed, supported the case of the Petitioner and not that of the Respondent–Corporation.

22. Mr. Patil then submitted that even assuming for the sake of argument that the appointment of the Arbitrator was not under Section 11(6) of the Arbitration Act, even then an Application for extension of the mandate of the Arbitral Tribunal would only lie before this Court in view of the findings in the First Order of Extension read with the observations of the Larger Bench in paragraph 14¹² of the judgement in the case of *Sheela Chowgule* in which the Division Bench

12 14. This Court in *Cabra Instalaciones Y. Servicios, S.A. vs. Maharashtra State Electricity Distribution Company Limited* (2019 SCC OnLine Bom 1437) and more recently on *K.I.P.L. Vistacore Infra Projects J.V. vs. Municipal Corporation of the City of Ichalkarnji* (supra) had, inter alia, taken the view that once the Arbitrator(s) is appointed by the High Court, the word ‘Court’ as mentioned in Section 29-A would have to be read as the High Court.

has held that *extension of Arbitrator's mandate lies exclusively with Court which appointed Arbitrator*".

23. Mr. Patil pointed out that in the case of ***Sheela Chowgule*** the Larger Bench had (in paragraph 32) approved the view taken by the High Court of Gujarat in the case of ***Nilesh Patel vs. Bhanubhai Patel***¹³ which *inter alia* held that it would lead to an irreconcilable conflict between the power of the Superior Courts to appoint Arbitrators under Section 11 of the Arbitration Act and those of the Civil Court to substitute such arbitrators under Section 29A(6). He submitted that the Larger Bench had expressly observed that it was inconceivable that the legislature would vest power in the Principal Civil Judge to substitute an Arbitrator, who may have been appointed by the High Court or the Superior Court. He submitted that the Larger Bench had also observed that the power for extending the mandate of an Arbitrator was coupled with the power to substitute an Arbitrator and in the case of extension of the mandate of an Arbitrator appointed by the High Court, either under Section 11(6) or otherwise, the High Court alone would be the "Court" under Section 29A of the Arbitration Act.

24. He further pointed out that this Court had in the case of ***Bharat Gulshan Vijan vs. Jayesh Tokershi Shah & Anr.***¹⁴ held that the judgement in the case of ***Sheela Chowgule*** was not an authority for the proposition that even where the High Court assumes power under Section 11(6) of the Arbitration Act, an

13 2018 SCC OnLine Guj 5017

14 Order dated 16th October 2024 of this court in Arbitration Petition (L) No. 25170 of 2024

Application under Section 29A of the Arbitration Act would lie before the Principal Civil Court in District or City Civil Court. He then reiterated that there was absolutely no merit in the contention of the Respondent-Corporation and that the Petition deserves to be allowed.

25. After having heard Learned Counsel for the Parties and having considered the case law upon which reliance was placed, I find that the contentions of the Respondent-Corporation are entirely devoid of merit for the following reasons, viz.

- A. *First*, that the First Order of Extension specifically held that the Order of Appointment of the arbitrator by this Court was by assuming powers under Section 11(6) of the Arbitration Act. This order was challenged by the Respondent-Corporation before the Hon'ble Supreme Court, however the SLP was dismissed without in any manner unsettling the findings of the First Order of Extension. Thus, the First Order of Extension is therefore final and binding on the Parties and it is now not open to the Respondent – Corporation, in the very same *lis* to reagitate that the appointment was by consent under Section 11(2) of the Arbitration Act. Hence in my view, given the facts of the present case, the decision of the Hon'ble Supreme Court in the case of ***Swadesh Kumar Aggarwal*** as also the decision of the Andhra Pradesh High in the case of ***Dr. V. V. Subbarao*** would not aid the Respondent-Corporation insofar as the present *lis* is concerned. Needless

to state that these decisions may be relied upon if and when such issue/question arises in the future between different Parties.

B. *Second*, the contention of the Respondent–Corporation that because the Hon’ble Supreme Court has kept open the question(s) of law, the Respondent – Corporation is entitled to reagitate the same is also untenable. While the Respondent – Corporation has in support and justification of this contention placed reliance upon the judgements of the Hon’ble Supreme Court in the case of ***Milap Chand Jain, Gauri Plasticulture Pvt Ltd.*** and ***Khoday Distilleries***, I find that none of these judgements permit the same party in the very same *lis* to reagitate the very same point/issue after dismissal of the SLP, even where the question of law was kept open. Hence, while there can be no quarrel with the several propositions of law laid down in the said judgments, the same are wholly irrelevant and inapplicable on facts.

C. *Third*, the contention of the Respondent–Corporation that principles of *res judica* would not apply is also equally misplaced. The Respondent – Corporation has in support of this contention relied upon judgements of the Hon’ble Supreme Court in the case of ***N.G. Subbaraya Setty and Another*** and ***Satyendra Kumar and Others*** however a plain reading of the said judgements clearly set out that the exemption to general rule of *res judicata* is only where the decision was on a pure question of law. In the

facts of present case, *firstly* the issue of jurisdiction is clearly not a pure question of law and *secondly* even assuming it is, it has not arisen in subsequent proceedings. The question has arisen in the very same list as that in which the First Order of Extension was passed.

D. *Fourth*, reliance placed by the Respondent – Corporation upon the decision of the Larger Bench of this Court in the case of *Sheela Chowgule* is also entirely misplaced. The Larger Bench of this Court in the case of *Sheela Chowgule* in the context of as to which Court an Application under Section 29A would lie, was considering only two questions, viz. (i) cases where the High Court constitutes an arbitral tribunal under Section 11(6) and (ii) in cases where an arbitral tribunal is constituted with the consent of Parties. It was in answer to question (ii) that the Larger Bench held that in the event an Arbitral Tribunal was constituted as per Section 11(2) i.e. with agreement and consent of the Parties, the application under Section 29A(4) would lie to the Principal Civil Court of original jurisdiction in a district. However, in view of the findings in the First Order of Extension, it is now not open to the Respondent–Corporation to contend that the appointment was by consent and not under Section 11(6) as already noted in (A) above. In fact, given the findings in the First Order of Extension, the decision of the Larger Bench would support the Petitioner’s case.

E. *Fifth*, another factor which cannot be lost sight of is that the Order of Appointment specifically required the Arbitrator to file a disclosure in terms of Section 11(8) of the Arbitration Act with the Registrar (Judicial) of this Court. This fact alone militates against the contention that the Appointment was by consent of the parties under Section 11(2) of the Arbitration Act. Additionally, the tender specifically provided against arbitration and conferred exclusive jurisdiction upon the Courts at Hatkanangale. Crucially, the Respondent-Corporation has by accepting the Order of Appointment given a go bye to the said clause which conferred exclusive jurisdiction on the Courts in Hatkanangale. Also, applicability of Section 42¹⁵ of the Arbitration Act cannot be lost sight of. It is not in dispute that the first application for extension of mandate was made before this Court and therefore in terms of Section 42 of the Arbitration Act, this court alone shall have jurisdiction over arbitration proceedings and subsequent application arising out of agreement and arbitral proceedings.

F. *Sixth*, in facts of the present case the highest judicial forum in the State i.e. High Court has appointed the Arbitrator hence, the term “Court” in 29A would have to be given a contextual meaning because if it is held that the District Court in Kolhapur would have jurisdiction to entertain an Application under 29A, the same would then also grant a power under

15 42. Jurisdiction.— Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

Section 29A(6) to the District Court at Kolhapur, to substitute an Arbitrator appointed by the High Court. Hence as held in the case of ***Nilesh Patel*** it is inconceivable that the legislature would vest the power in the Principal Civil Judge to substitute an arbitrator who may have been appointed by the High Court. This finding has been accepted by the Larger Bench of this Court in the case of ***Sheela Chowgule***.

26. For the aforesaid reasons I find that the Respondent's opposition to the present Petition solely on the ground of jurisdiction is entirely without any merit, given that this very issue stood resolved by the first Order of Appointment. The Respondent has by re-agitating the very same issue which is no longer *res integra* between the Petitioner and the Respondent insofar as these proceedings are concerned, has not only wasted precious judicial time but has also frustrated and delayed the arbitration proceedings between the parties. Clearly the Respondent had indulged in needless litigation which is something that ought not to be encouraged and in fact is required to be deprecated.

27. Hence, I pass the following Order:

- (i) The Commercial Arbitration Petition is allowed in terms of prayer clause (a) which reads viz;

“(a) That this Hon’ble Court be pleased to extend the time period for disposal of the Arbitration proceedings pending between the

parties of 8 months or such time as this Hon'ble Court may deem fit and proper."

- (ii) It is made clear that time extended in prayer clause (a) shall take effect from the date on which this Order is uploaded.
- (iii) The Respondent is ordered to pay costs of Rs. 1,00,000/- to the Petitioner. In case the said cost is not paid to the Petitioner same shall be recovered as arrears of land revenue.

28. The Commercial Arbitration Petition is disposed of accordingly.

(ARIF S. DOCTOR, J.)