



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO. 430 OF 2025

Nalin Vallabhbhai Patel and Another

.....**APPLICANTS**

: VERSUS :

Atharva Realtors and Others

....**RESPONDENTS**

Mr. Rohaan Cama with Mr. Manish Gala, Mr. Aayush Yadav, Mr. Minil Shah and Ms. Alpa Gala i/b Mr. Nilesh N. Gala for the Applicants.

Mr. V.M. Chavda with Ms. M.V. Chavan and Ms. Reva Kulkarni for Respondent Nos. 1 and 2.

Mr. Kapil Shah with Mr. Vatsal Parmar i/b M.K. Juris Associates for Respondents Nos. 3 and 4.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON : 11 MARCH 2026.

JUDG. PRON. ON : 1 APRIL 2026.

JUDGMENT:

1) This Application, filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) for appointment of an arbitrator, raises an interesting issue as to whether an arbitrator can be appointed when the Court has expressly refused to extend the mandate of

the earlier arbitrator by rejecting the Petition filed under Section 29A of the Arbitration Act. The Court is thus tasked upon to decide the issue as to whether refusal by the Court to extend the mandate under Section 29A of Arbitration Act would bring to an end the very arbitral proceedings making it impermissible to appoint another arbitrator to decide the same dispute.

2) Disputes and differences between the parties have arisen out of performance of Deed of Assignment of Development Rights dated 6 December 2010. Petitioners had filed Commercial Arbitration Petition No. 1310 of 2019 under Section 9 of the Arbitration Act in this Court seeking interim measures. In that Petition, this Court referred the parties to arbitration in view of arbitration agreement contained in clause 17 in the Deed of Assignment of Development Rights. By order dated 14 November 2019, this Court appointed a sole Arbitrator for adjudication of disputes and differences between the parties by converting Section 9 Petition into application under Section 17 of the Arbitration Act. The Arbitrator so appointed by order dated 14 November 2019 expressed inability to take up the reference and accordingly by order dated 13 January 2020, this Court substituted the Arbitrator. The learned sole Arbitrator passed order under Section 17 of the Arbitration Act on 31 August 2020. Nothing happened thereafter for a considerable period of time. Applicants thereafter filed Commercial Arbitration Petition No.221 of 2024 under Section 29A of the Arbitration Act seeking extension of mandate of the arbitrator. By order dated 18 October 2024, this Court refused to extend the mandate of the Arbitrator observing that the Applicants had

abandoned the arbitration proceedings. Special Leave to Appeal (C) No. 29786 of 2024 preferred by the Applicants came to be dismissed by the Apex Court by order dated 14 February 2025.

3) Applicants have thereafter issued notice dated 10 July 2025 contending *inter alia* that the cause of action for arbitration continues and accordingly made demand for appointment of arbitrator for adjudication of the disputes. Respondent was called upon to either consent for the suggested Arbitrator or to suggest name of other nominee arbitrator. Since the Respondent did not consent for appointment of the arbitrator, the present Application is filed under Section 11(6) of the Arbitration Act for appointment of arbitrator.

4) Respondent has appeared in the Application and has opposed the same *inter alia* submitting that appointment of arbitrator is now impermissible in the light of termination of arbitration proceedings by this Court vide order dated 18 October 2024, which is upheld by the Apex Court.

5) Mr. Cama, the learned counsel appearing for the Petitioner has submitted that order dated 18 October 2024 passed by this Court merely refuses to extend the mandate of the arbitrator on account of lack of sufficient cause for explaining the delay in filing application under Section 29A of the Arbitration Act. He submits that the said order does not come in the way of this Court appointing an arbitrator. That unlike Order IX Rule 9 of the Code of Civil Procedure, 1908 (**the Code**) which

provides for specific bar for new suit in the event of earlier suit being dismissed for non-prosecution, there is no such similar provision in Section 29A or anywhere in the Arbitration Act. That Section 29A only tests the aspect of sufficient cause for delay in conduct of arbitration and prosecution thereof. Therefore, order dated 18 October 2024 can be only read to mean that the Court concluded that there was no sufficient cause for extending the mandate of the Arbitral Tribunal. That the same would not tantamount to abandonment of arbitration clause or of arbitral proceedings. He relies on judgment of this Court in **Tata Motors Passengers Vehicles Ltd. & Anr. Vs. Ghosh Brothers Automobiles & Ors.**¹ in support of his contention that there is a vast difference between the concepts of termination of mandate of the arbitrator and termination of the arbitral proceedings themselves. He relies on judgment of this Court in **Khorshed E. Nagarwalla vs. Daryus Soley Panthakey**² in support of his contention that only mandate of the arbitrator gets terminated under Section 14 and not the arbitral proceedings. That when provisions of Section 29A are read together with Section 32, the present case contemplates termination of mandate of arbitrator and not of arbitral proceedings.

6) Mr. Cama further submits that even if it is assumed arguendo that there was any embargo against appointment of arbitrator *qua* the same issue and same reliefs, there is a continuing entitlement of the Applicant in the facts and circumstances of the present case. That there is

1 Commercial Arbitration Petition (L) No. 26333 of 2025 decided on 12 February 2026

2 2010 (4) Mh.L.J. 936

a continuous obligation on the part of the contesting Respondents to deliver the flats including the 8 flats on 16 and 17 floor. He invites my attention to Affidavit in Reply in which Respondents have admitted the obligation to provide the flats to the Applicant. That since cause of action is continuous, the arbitration agreement also continues and that therefore, there is no embargo on this Court to appoint the arbitrator for adjudication of such continuous disputes.

7) Mr. Cama further submits that the defence of Respondents about abandonment of earlier arbitral proceedings is misplaced as the said defence does not mean that there is abandonment or non-existence of the arbitration clause. That existence of arbitration clause is not in dispute and there is no question of same being abandoned. That there is no valid termination of mandate of arbitral proceedings under Section 32 of the Arbitration Act. Without prejudice, he submits that the issue of abandonment, waiver, *res judicata*, etc cannot be decided by Reference Court under Section 11 of the Arbitration Act. He relies on judgment of Apex Court in **SBI general Insurance Company Limited vs. Krish Spinning³**, **Motilal Oswal Financial Services Limited vs. Santosh Cordeiro and Anr.⁴** and **Cox and Kings Limited vs. SAP India Private Limited and Anr.⁵** and of this Court **Rajuram Sawaji Purohit vs. The Shandar Interior Private Limited⁶**.

3 (2024) 12 SCC 1

4 2026 SCC OnLine SC 6

5 (2025) 1 SCC 611

6 Commercial Arbitration Application (L) No. 25035 of 2024 decided on 10 October 2025

8) Mr. Cama further submits that the order passed by this Court in **Fedbank Financial Service Ltd. vs. Narendra H Shelar**⁷ has no application to the present case as the same does not lay down any ratio and turns squarely on facts of that case. Reference was sought in that case in respect of the very same arbitration and the case did not involve issue of continuous cause of action. He also submits that this Court in **Fedbank Financial** (supra) did not consider the issue of interplay between Sections 29A and 32 of Arbitration Act. That the law is subsequently developed which does not permit the Reference Court to decide the issue of abandonment, waiver, *res judicata*, etc. He also relies on judgment of Constitution Bench of Apex Court in **Re : Interplay between arbitration agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899**⁸. On above broad submissions, Mr. Cama would pray for making reference of disputes to arbitrator.

9) The Petition is opposed by Mr. Chavda, the learned counsel appearing for Respondent Nos. 1 and 2. He submits that since this Court has refused to extend mandate of arbitration, Applicant is precluded from seeking reference in respect of the same arbitration. That legislative intent behind insertion of Section 29A is speedy resolution of arbitral proceedings as held in **Mohan Lal Fatehpuria vs. M/s. Bharat textiles and Ors.**⁹ and **Rohan Builders (India) Private Limited vs. Berger Paints India Limited**¹⁰.

7 2020 SCC OnLine Bom 5252

8 (2024) 6 SCC 1

9 SLP (C) No. 13759 of 2025 decided on 10 December 2025

10 (2025) 10 SCC 802

10) Mr. Chavda further submits that termination of mandate of Arbitral Tribunal under Section 29A implies termination of arbitral proceedings so far as the party at fault is concerned. That the expression 'termination' used in Section 29A of the Arbitration Act has been interpreted by the Apex Court in **Rohan Builders** (supra) holding that arbitral proceedings will get terminated in absence of extension of time limit under Section 29A. That the effect of the judgment is that once the Court, in its wisdom, does not extend the time limit for arbitral proceedings, the same stands terminated at least so far as the party at fault is concerned. That only a faultless party is entitled to initiate fresh arbitral proceedings.

11) Mr. Chavda further submits that permitting a defaulting party to maintain fresh arbitration would tantamount to review of the order rejecting extension of time under Section 29A of the Arbitration Act. That upon conjoint reading of provisions of the Arbitration Act, the only plausible view that emerges is that while considering the Section 11 Application filed after rejection of Section 29A Application, the Court needs to examine whether Section 29A Application was dismissed due to the Applicant's fault or for any other reason such as default on the part of the Tribunal. That in the present case, the Section 29A application is dismissed by holding the Applicant responsible and that therefore, there is no question of making fresh reference by undertaking the exercise of reversal of Section 29A order, which is already confirmed by the Apex Court. That provisions of Order IX Rule 9 of the Code would also apply

even if not expressly provided for in view of stringent timelines under Section 29A of the Arbitration Act.

12) Mr. Chavda further submits that Section 29A is a self-contained code and that provisions contained in Sections 14, 15 or 32 of the Arbitration Act cannot be imported to interpret the same. That this Court needs to decide the issue of permissibility to make reference and the same cannot be left out to be decided by the Arbitral Tribunal. Lastly, he submits that the present Application is otherwise barred by limitation. He denies that there is any continuous cause of action. He would accordingly pray for dismissal of the Application.

13) Mr. Shah, the learned counsel appearing for Respondent Nos.3 and 4 also opposes the Application submitting that there is gross abuse of process of law highlighting the negligent manner in which previous arbitral proceedings were prosecuted by the Applicant. That Respondent Nos.3 and 4 were never involved in the negotiation process. He would therefore pray for dismissal of the Application.

14) Rival contentions urged on behalf of the parties now fall for my consideration.

15) Applicant is desirous of having the disputes and differences with the Respondents arising out of the Deed of Assignment of Development Rights dated 6 December 2010 adjudicated through Arbitration. There is no dispute to the position that clause 17 of the Deed

of Assignment and Development Rights dated 6 December 2010 contains arbitration agreement. The Arbitral Tribunal for adjudication of the disputes was earlier constituted by this Court vide order dated 14 November 2019 passed in Commercial Arbitration Petition No.1310 of 2019. The learned sole Arbitrator so appointed was substituted by this Court by order dated 13 January 2020. The order further directed that the time to complete the arbitration would commence from the date when the substituted Arbitrator entered upon the reference to his arbitration.

16) It appears that the time limit for making Award under Section 29A of the Arbitration Act commenced on 10 August 2020. The Arbitral Tribunal passed order dated 31 August 2020 deciding the application filed by the Applicant under Section 17 of the Arbitration Act. It appears that after disposal of Section 17 Application, no further proceedings in the arbitration took place for a considerable period of time. The Applicant approached this Court seeking extension of mandate of the Arbitral Tribunal under Section 29A of the Arbitration Act by filing Commercial Arbitration Petition No.221 of 2024 on 26 April 2024. This Court has however dismissed the Petition by refusing to extend the mandate of the Arbitrator by recording following findings:

10. After having heard Learned Counsel and perusing the judgments upon which reliance was placed, I have no hesitation in holding that the Petitioner has not made out any sufficient cause as to why the mandate of the Tribunal should be extended under Section 29A(5) of the Arbitration Act. I say so because, viz.

A. Even accepting the Petitioners' case that there were settlement talks between the Parties, the record clearly bears out

that these settlement talks did not fructify into a settlement as is clear from the Petitioners' own email dated 20th April 2022. The Petitioners did absolutely nothing post this to seek an extension of time until the filing of the present Petition which is over 2 years. There is also no explanation as to why the Petitioner had waited for over two years from this date to file the present Petition.

B. Additionally, to accept the Petitioners' contention that there is no time prescribed for filing a Petition under Section 29A, would in my view be to turn Section 29A on its head. The very provisions of Section 29A of the Arbitration Act lay down the stringent timelines in which Arbitration proceedings have to be conducted. Section 29A(5) itself makes it clear that the extension of period referred to in sub-section(4) is to be granted only if the Court is satisfied that sufficient cause is shown for extending the mandate. This would therefore in my view include the conduct of the Parties so as to demonstrate that the Parties were diligently pursuing the arbitration proceedings. The judgment of the Hon'ble Supreme Court in the case of *Rohan Builders* (supra) itself makes it expressly clear that extension under Section 29A(5) was not to be granted mechanically on filing of the application. In my view, the Petitioners' conduct alone would disentitle the Petitioner to seek an extension of time. Even accepting the Petitioners' case that the mandate expired on 1st March 2022 the present Petition has been filed on 26th April 2024, which delay in my view is adequate to show that the Petitioner was not serious in pursuing the arbitration.

C. Equally, the judgments of the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag & Anr. (supra) and Hari Shankar Singhania & Ors. (supra) would not apply since the said judgments were delivered considering the power of condonation of delay under general of law of limitation and not in the context of Section 29A. Additionally, it is crucial to note that the judgment of the Hon'ble Supreme Court in the case of Hari Shankar Singhania & Ors. was in the context of section 20 of The Arbitration Act, 1940 and not Section 29A.

D. In my view, it is plainly clear that after the passing of the Interim Order dated 31st August, 2018, the Petitioners have abandoned the arbitration proceedings. Nothing prevented the Petitioners from approaching this Court earlier and equally, nothing prevented the Petitioners from keeping the Learned Arbitrator, who is a Former Judge of this Court informed of the

settlement talks etc. That is the least that was expected from the Petitioner, infact from both Parties. Once Parties had committed themselves to the stringent timelines under the Arbitration Act, the Parties were then bound to ensure that the settlement talks etc. were also conducted and concluded within these timelines or then applied for an extension of time at that stage itself and not belatedly as has been done in the present case.

(emphasis and underlining supplied)

17) Thus, this Court refused to extend the mandate of Arbitral Tribunal holding that the settlement talks had failed by 20 April 2022 and nothing was done thereafter for over two years. This Court took into consideration Applicant's conduct for denying the extension of mandate. Most importantly this Court recorded a finding that after passing of interim order dated 31 August 2018 (*sic* 2020) the Applicant had '*abandoned the arbitration proceedings*'. This Court held that nothing prevented the Applicant from approaching the Court or at least from informing the learned Arbitrator about settlement talks. This Court further held that it was the duty of the parties to ensure that the settlement talks were conducted and concluded within reasonable time.

18) The order passed by this Court on 18 October 2024 refusing to extend mandate of Arbitral Tribunal was challenged by Applicant by filing Special Leave to Appeal (C) No.29786 of 2024 before the Hon'ble Supreme Court, which has been dismissed by order dated 14 February 2025.

19) After being unsuccessful in getting the mandate of the Arbitral Tribunal extended under Section 29A of the Arbitration Act, the Applicant issued notice dated 10 July 2025 nominating an Arbitrator for

resolution of disputes between the parties by referring to clause 17 of the Deed of Assignment of Development Rights dated 6 December 2010. The notice dated 10 July 2025 repeatedly asserts that there are continuous obligations on the Respondents and that their acts constituted continuing defaults. Another notice dated 18 July 2025 was addressed by the Applicant once again nominating Arbitrator for resolution of the disputes. This is how the present Application is filed seeking appointment of the Arbitrator.

20) The issue that arises for consideration is whether an Arbitrator can be appointed by this Court under Section 11(6) of the Arbitration Act when this Court has already refused to extend mandate of the earlier Arbitral Tribunal.

21) Section 29A of the Arbitration Act has been added to the Arbitration Act by the 2015 Amendment for ensuring completion of arbitral proceedings in a timely manner without undue delays. Section 29A of the Arbitration Act provides thus:

29A. Time limit for arbitral award.—

(1)The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(emphasis and underlining supplied)

22) Thus, the Award in the domestic arbitration is required to be made by the Arbitral Tribunal within a period of 12 months from the date of completion of pleadings, which period can be extended by six months with the consent of the parties. Under sub-section (4) of Section 29A of the Act, if the Award is not made within the time specified in sub-section (1) or within the extended period agreed between the parties, the mandate of arbitrator(s) terminates unless the Court extends the time. Thus, what terminates under Section 29A (4) of the Arbitration Act is the 'mandate of the arbitrator'. Second proviso to sub-section (4) provides that when Application under sub-section (5) is pending, the mandate of the Arbitrator shall continue till disposal of the Application. Thus, what is contemplated under Section 29A(4) of the Arbitration Act is essentially extension of and termination of 'mandate of the arbitrator' and not the 'mandate of arbitration proceedings'. In similar manner, Sections 14 and 15 of the Arbitration Act also deal with termination of mandate of arbitrator. Sections 14 and 15 of the Arbitration Act provide thus:

14. Failure or impossibility to act.—

(1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay;
- and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

15. Termination of mandate and substitution of arbitrator.—

(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

23) As contradistinct from termination of mandate of arbitrator under Sections 14, 15 and 29A of the Arbitration Act, Section 32 provides for termination of arbitral proceedings. Section 32 of the Arbitration Act provides thus:

32. Termination of proceedings.—

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

- (b) the parties agree on the termination of the proceedings, or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

24) Thus, arbitral proceedings get terminated by final Award or by withdrawal of claim by the Claimant or by termination of proceedings with agreement of parties or when the Tribunal finds that continuation of proceedings has become unnecessary or impossible. Under sub-section (3) of Section 32 of the Arbitration Act, the mandate of the Arbitral Tribunal terminates with termination of arbitral proceedings. Thus, Sub-section (3) of Section 32 of the Arbitration Act once again makes a distinction between concepts of 'termination of mandate of arbitrator' and 'termination of arbitral proceedings'. This Court had an occasion to consider distinction between the concepts of termination of mandate of arbitrator and termination of mandate of arbitral proceedings in *Tata Motors Passenger Vehicles Ltd.* (supra) and has held that mere termination of mandate of the Arbitral Tribunal does not result in automatic termination of arbitral proceedings. This Court held in paragraphs 21, 22, 23 and 24 as under:

21) **However, there is difference between the concepts of termination of mandate of arbitrator and termination of arbitral proceedings. Mere termination of mandate of arbitrator does not automatically result in termination of arbitral proceedings,** and in such an event the reference continues and merely a vacancy occurs in the chair of the arbitrator, which can be filled up under Section 15(2) of the Arbitration Act. However, the distinct concept of termination of

arbitral proceedings is dealt with under Section 32 of the Arbitration Act which provides thus:

xxx

22) The position that mere termination of mandate of the arbitrator does not result in automatic termination of arbitral proceedings is well settled and reference in this regard can be made to the judgment of the Apex Court in *Dani Wooltex Corporation* (supra) in which the Apex Court has held in Paras-12 to 14 as under:

12. The Arbitration Act has two provisions for terminating an arbitrator's mandate. Sections 14 and 15 are the relevant sections. The arbitrator is empowered to withdraw from his office, which terminates his mandate. However, the arbitral proceedings continue by the arbitrator's substitution.

13. The order of termination passed by the learned arbitrator, in this case, gives an impression that he was of the view that unless parties move the Arbitral Tribunal with a request to fix a meeting or a date for the hearing, the Tribunal was under no obligation to fix a meeting or a date for hearing. The appointment of the Arbitral Tribunal is made with the object of adjudicating upon the dispute covered by the arbitration clause in the agreement between the parties. By agreement, the parties can appoint an arbitrator or Arbitral Tribunal. Otherwise, the Court can do so under Section 11 of the Arbitration Act. An arbitrator does not do pro bono work. For him, it is a professional assignment. A duty is vested in the learned arbitrator or the Arbitral Tribunal to adjudicate upon the dispute and to make an award. The object of the Arbitration Act is to provide for an efficient dispute resolution process. An arbitrator who has accepted his appointment cannot say that he will not fix a meeting to conduct arbitral proceedings or a hearing date unless the parties request him to do so. It is the duty of the Arbitral Tribunal to do so. If the claimant fails to file his statement of claim in accordance with Section 23, in view of clause (a) of Section 25, the learned arbitrator is bound to terminate the proceedings. If the respondent to the proceedings fails to file a statement of defence in accordance with Section 23, in the light of clause (b) of Section 25, the learned arbitrator is bound to proceed further with the arbitral proceedings. Even if the claimant, after filing a statement of claim, fails to appear

at an oral hearing or fails to produce documentary evidence, the learned arbitrator is expected to continue the proceedings as provided in clause (c) of Section 25. Thus, he can proceed to make an award in such a case.

14. On a conjoint reading of Sections 14 and 15, it is apparent that an arbitrator always has the option to withdraw for any reason. Therefore, he can withdraw because of the parties' non-cooperation in the proceedings. **But in such a case, his mandate will be terminated, not the arbitral proceedings.**

23) Similarly, this Court in *Kifayatullah Haji Gulam Rasool* (supra) has held in paras-11, 12, 16 and 17 as under:

11. Section 14 specifies the grounds for terminating the mandate of an arbitrator and method of doing so. The grounds for terminating the mandate are : (i) the arbitrator becomes *de jure* or *de facto* unable to perform his function or (ii) for some other reasons fails to act without undue delay or (iii) the arbitrator withdraws from his office or (iv) the parties agree to the termination of his authority as an arbitrator; whereas three methods can be employed for terminating the mandate of the arbitrator. They are (a) by withdrawal of the arbitrator from his office (b) by agreement of parties and (c) by decision by the Court.

12. Section 15 provides for additional grounds for termination of the mandate and for appointment of substitute arbitrator. The additional grounds provided are (a) where he withdraws from office for any reason or (b) by or pursuant to the agreement of the parties. Though sub-section (1) purports to state additional grounds for termination of authority of an arbitrator but one of the grounds mentioned therein is covered by the grounds set out in clause (b) of sub-section (1) of section 14. On the authority of the arbitrator being terminated, a substitute arbitrator in place of arbitrator whose authority is terminated has to be appointed and such appointment, as per sub-section (2) is required to be made by following the same procedure as followed while appointing the arbitrator who is being substituted.

16. On the above backdrop let us consider the legal provisions providing for commencement and termination of the arbitration proceedings.

(a) Section 21 of the Act provides for commencement of the arbitral proceedings. This section provides that in the absence of an agreement between the parties to the reference, the arbitral dispute in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to the Arbitration is received by other party. If in the arbitral agreement parties provide any other mode for commencement of the arbitral proceedings, the arbitral proceedings will commence in accordance therewith.

(b) Section 25 incorporates the course of action arbitral Tribunal may adopt in the event of party committing any of the three defaults mentioned in this section. The provision of section 25 is intended to enable the arbitral tribunal not to allow any proceedings to drag on at the instance of one or the other party. What is contemplated in this section is an order passed by arbitral Tribunal terminating arbitral proceedings. No such order has been passed by the arbitral tribunal in this case as such even provision of section 25 is not available to the petitioners. The said provision cannot be invoked before this Court. However, the petitioners are at liberty to obtain appropriate orders in this behalf from the arbitral Tribunal but not from this Court.

(c) Section 32 of the Act makes provision for termination of the arbitral proceedings. Under this section it is provided, that the arbitral proceedings shall automatically stand terminated when final award is made. Hence, for automatic termination of the arbitral proceedings, arbitral award has to be final. Reading of section 32 unequivocally provides that only 'final award' shall terminate the arbitral proceedings. The final award is one which decides or completes decision of claims presented.

The arbitral proceedings can also be terminated by an order of the arbitral Tribunal which order can only be passed when claimant withdraws the claim or when the parties to the reference agree on the termination of the proceeding, or the arbitral Tribunal finds that continuation of the arbitral proceeding has become unnecessary or impossible. As per clause (b) of sub-section (2) of section 32 the parties to the agreement have also been given liberty to terminate arbitral proceedings but such a request must be made to the arbitral tribunal by the parties to the proceedings and it must be accepted by the arbitral Tribunal by an order passed in that behalf. As per sub-section (3) the mandate of the arbitral tribunal, can also be brought to an end with termination of arbitral proceedings subject to section 33 and sub-section (4) of section 34 of the Act.

17. In the above premises, the Act makes specific provision for commencement and termination of the arbitral proceedings. In the instant case, none of the events as contemplated under section 32 of the Act have taken place. No final award has been passed. No joint request depicting agreement of parties have been made to the arbitral tribunal to terminate proceedings. No orders have been passed by the Arbitral Tribunal as contemplated under sub-section (2) of section 32 of the Act. **Therefore, it cannot be said that the arbitral proceeding have come to an end. I, therefore, hold that the arbitral proceedings have not come to an end even though the mandate of the arbitrators have come to an end.**

24) Therefore, mere withdrawal by the learned Arbitrator from the arbitral proceedings vide letter dated 18 March 2021 has not resulted in termination of arbitral proceedings under Section 32 of the Arbitration Act. The reference continued notwithstanding the withdrawal by the learned Arbitrator.

(emphasis supplied)

25) The distinction between the concepts of termination of mandate of arbitrator and termination of arbitral proceedings is also highlighted in Division Bench judgment of this Court in ***Khorshed E. Nagarwalla*** (supra) in which it is held in the context of provisions of Section 14 and 15 of the Arbitration Act as under:

4. **Both the provisions if read would show what is terminated is the mandate of the arbitrator and not the provision for arbitration.** Section 11(2) thereafter provides that in the event of vacancy in the arbitral tribunal and the parties not agreeing to appoint an arbitrator, any aggrieved party can move under section 11(5) of the said Act requesting the Chief Justice or his designate to fill in the vacancy. Thus, the Act itself contains provisions for reconstitution of the Tribunal even in the case where the named arbitrator expires.

(emphasis supplied)

26) Thus, when the time limit specified in Section 29A of the Arbitration Act expires and the Court refuses to extend the same, the

mandate of the arbitrator terminates. Does this mean that the arbitral proceedings still continue and can Court appoint a substitute arbitrator in such circumstances? There appears to be no direct judgment on the issue with elaborate discussion on distinction in the concepts of termination of mandate of arbitrator under Section 29A of the Arbitration Act and termination of arbitral proceedings under Section 32. However, in ***Fedbank Financial Services Limited*** (supra), learned Single Judge of this Court had an occasion to deal with similar situation. In case before this Court, the sole Arbitrator had entered upon the reference and after filing of statement of claim and statement of defence, nothing had happened at all. The Respondent therein therefore filed an application for closure of the proceedings on the ground that the same were not concluded within one year. The Applicant therein filed an Application under Section 29A of the Arbitration Act, which was dismissed by this Court. Thereafter, the Applicant therein filed Application under Section 11 of the Arbitration Act for start of the process all over again by appointing the arbitrator. In the light of the above factual position, this Court passed following order in ***Fedbank Financial Services Ltd.*** (supra).

5. The Respondent then filed an application for closure of the proceedings saying that they had not been concluded within one year. On this the learned sole arbitrator made an application that since time had not been extended, there being no application by the Petitioner under Section 29-A of the Arbitration and Conciliation Act, the arbitration proceeding was closed with the mandate terminated. Parties were set at liberty to take appropriate steps in accordance with law. This order passed by the learned sole arbitrator was on 18 th July 2019.

6. Ms. Bhogale cannot dispute the fact that the Petitioner was late in filing a Section 29-A Petition. It did file that Petition, Arbitration Petition No. 1271 of 2019. I dismissed it on 9 th January 2020.

7. The situation therefore is that an arbitration previously invoked with a nomination agreed by the Respondent has now come to an end. The Arbitral tribunal mandate has been terminated. There is no extension of time.

8. What the Petitioner now seeks is to start the process all over again by presenting this application under Section 11. This is a second go-around for the same arbitration.

9. The opposition from the Respondents is that there must be some limit. The emphasis in arbitration law is on a speedy and time-bound disposal. If a Petitioner invoking arbitration is itself remiss in diligently prosecuting the arbitration, the submission is that it surely cannot be open to the Petitioner to come back to Court and constantly seek to reopen the arbitration like this. If such constant circular actions are permitted, then conceivably there would be no end to arbitration at all and no finality to the disputes. The arbitration law cannot possibly aid, it is submitted, a party who is not vigilant in prosecuting its rights and remedies.

10. I agree. There is no explanation for the delay.

The order of the arbitral tribunal, though short, does not in any way assist the Petitioner.

11. I do not see how an arbitration clause can be constantly revived and brought back to life again and again like this. If the Petitioner has any rights under the contract in question it is at liberty to pursue those but its arbitral remedy must surely be considered to be closed.

12. The application is dismissed.

27) Thus, in ***Fedbank Financial Services Ltd.*** (supra) this Court refused to make reference by appointing arbitrator holding that the arbitration clause could not be constantly revived and brought back into life again and again. This Court agreed with submission of the Respondent therein that arbitration law cannot aid a party who is not vigilant in prosecuting its rights and remedies. However, this Court left

open the remedy other than arbitration for the Applicant in respect of rights under the contract.

28) Perusal of the judgment in *Fedbank Financial Services Ltd.* (supra) would indicate that the argument of difference between termination of mandate of Arbitrator under Section 29A of the Arbitration Act and termination of the arbitration proceedings under Section 32 of the Arbitration Act was not raised before this Court. It therefore becomes difficult to accept that *Fedbank Financial Services Limited* (supra) lays down an abstract proposition of law that in no case, application for appointment of Arbitrator can ever be made after refusal by the Court to extend the mandate of the Arbitrator under Section 29A of the Arbitration Act.

29) There can be myriad reasons why the Award is not made within the time limit specified in Section 29A of the Arbitration Act. Sometimes parties may be responsible for the delay and sometimes even the Arbitral Tribunal may be responsible for delay. In a case where Arbitral Tribunal is responsible for the delay in concluding the arbitral proceedings and in making the Award and if the Court refuses to extend mandate of the Arbitrator under Section 29A (4) of the Arbitration Act, can it be contended that the arbitral proceedings would also end? The answer, to my mind, appears to be in the negative. No doubt under subsection (6) of Section 29A of the Arbitration Act, the Court has power to substitute the Arbitrator and this power of substitution is to be necessarily exercised keeping in mind the conduct of the Arbitrator. In a

given case where the appointed Arbitrator does not make progress in the proceedings and parties are not at fault, the Court can substitute the Arbitrator while extending the mandate under Section 29A. But there may be a case that the Court does not substitute the Arbitrator but also does not grant extension of mandate of the Arbitrator under Section 29A(4) of the Arbitration Act. Whether parties can be made to suffer for the acts of the Arbitrator in such a situation? The answer can obviously not be in the affirmative. This is also because mere termination of mandate of Arbitrator under Section 29A (4) of the Arbitration Act does not automatically result in termination of arbitration proceedings under Section 32 of the Arbitration Act.

30) A converse however is true. With termination of mandate of arbitration proceedings, the mandate of Arbitrator also comes to an end under sub-section (3) of Section 32 of the Arbitration Act. The Arbitration Act otherwise does not recognize the concept that termination of mandate of Arbitrator under Sections 14, 15 or 29A of the Arbitration Act brings to an end the very arbitration proceedings. In my view therefore, it is difficult to accept an abstract principle that in every case where the Court refuses to extend the mandate of Arbitrator, the arbitral proceedings themselves would automatically come to an end and that the Court would be precluded from making appointment of another Arbitrator under Section 11(6) of the Arbitration Act.

31) Therefore, in my view, appointment of arbitrator after refusal by Court to extend mandate of previous arbitrator under Section 29A

would depend on facts of each case and the question as to 'who is at fault' would provide the key for solving the problem. If parties are responsible for delay and Court has refused to extend the mandate on account of conduct of parties, the arbitral proceedings will have to be treated as having been terminated. This is necessary because if the arbitral proceedings are not treated to have been terminated, parties at fault would get another bite at the cherry by seeking appointment of another arbitrator. Finding recorded by Section 29A Court against them would become redundant and they would be free to get another Arbitrator appointed even though the Court has consciously refused to extend mandate of the previous Arbitrator. If fresh arbitrator is appointed by exercise of powers under Section 11(6) of the Arbitration Act after Section 29A Court refuses to extend the mandate of arbitrator by recording a finding that the Claimant had abandoned the arbitration, exercise of power under Section 11(6) of the Arbitration Act would tantamount to review of the order passed under Section 29A.

32) In the present case however, the Applicant is found to be extremely negligent in prosecuting arbitral proceedings before the previous Arbitrator. This Court has recorded a specific finding that the Applicant had abandoned 'the arbitration proceedings'. The issue for consideration is whether in such circumstances, the principle of expiry of mandate of arbitrator not resulting in automatic expiry of mandate of Arbitral Tribunal can be applied in the present case? The answer to this question also appears, to my mind, to be in the negative. When this Court did not extend the mandate of the previous arbitrator on account of

conduct of the Applicants and has held that the Applicants had abandoned the arbitration proceedings, appointing another arbitrator at the behest of the Applicants would be like rewarding them for their faults.

33) Considering the facts of the present case, if this Court, in exercise of referral jurisdiction under Section 11(6) of the Arbitration Act proceeds to appoint an arbitrator, it would virtually sit in appeal, if not review, over the findings recorded while deciding the Petition under Section 29A of the Arbitration Act. When the Court exercising powers under Section 29A of the Arbitration Act has recorded an emphatic finding that '*the Petitioners have abandoned the arbitration proceeding*', this Court cannot reward them by providing an opportunity to arbitrate the disputes. The doors of arbitration are closed for them by Section 29A Court. What Applicant is seeking to do in the present case is an attempt to overreach the findings recorded by Court while refusing to extend the mandate under Section 29A of the Arbitration Act. Such an attempt cannot be countenanced in law. As observed above, there may be cases where the Court can refuse to extend mandate of Arbitrator for reasons not attributable to the parties and in such circumstances, it is possible that referral Court can exercise powers under Section 11(6) of the Arbitration Act to appoint a substitute arbitrator by concluding that the arbitration proceedings still continues. But that principle cannot be applied in the present case.

34) Thus, on conjoint reading of provisions of Sections 11, 29A and 32 of the Arbitration Act, the position that emerges is that

application for appointment of Arbitrator is not maintainable in a case where the Court has refused to extend mandate of the arbitrator under Section 29A of the Arbitration Act due to fault of the Applicant. It is only in cases where refusal to extend mandate of the Arbitrator under Section 29A of the Arbitration Act is due to reasons other than fault of the Applicant, the referral Court would be justified in entertaining and deciding the application for appointment of arbitrator under section 11 (6) of the Arbitration Act. I am fortified in my view, by judgment of the Apex Court in **Rohan Builders** (supra). The issue before the Apex Court in **Rohan Builders** (supra) was slightly different i.e. whether an application for extension of time under Section 29A of the Arbitration Act can be filed after expiry of the period for making the arbitral Award. The Apex Court has held that such an application for extension of time under Section 29A (4) and (5) of the Arbitration Act is maintainable even after expiry of 12/18 months. However while answering the issue, the Apex Court has drawn distinction between a 'faultless party' and the 'party at fault'. In paragraph 17 of the judgment, the Apex Court has refused to give restrictive or normal interpretation to the language used under Section 29A (4) of the Arbitration Act and has held that narrow interpretation would present an additional challenge by relegating a 'faultless party' to a fresh reference or appointment of an arbitrator under the Arbitration Act, thereby impeding the arbitration rather than facilitating it. It is held by the Apex Court in paragraphs 12, 13, 14, 15, 16 and 17 of the judgment as under:

12. The word "terminate" in Section 29-A(4) has to be read in the context of the said provision. 19 It should not be read as an isolated word with a

strict dictionary meaning, but rather in conjunction with the surrounding words and expressions which warrant recognition and consideration. This evinces the legislative intent. Secondly, the legislative preference for the term "terminate" over "suspend" is apparent, since the word "suspend" could cause incongruity and a legal conundrum if no party files an application for an extension of time. In such a scenario, the arbitral proceedings would stand suspended ad infinitum. Therefore, the legislature by using the word "terminate" intends to affirm the principle of party autonomy. Resultantly, if neither party moves an application for an extension of time for making the award, the arbitration proceedings are terminated. Consequences follow. Clearly, the use of the word "suspension" would have led to infeasible ramifications.

13. The word "terminate" in Section 29-A(4) makes the Arbitral Tribunal functus officio, but not in absolute terms. The true purport of the word "terminate" must be understood in light of the syntax of the provision. The absence of a full stop after the word "terminate" is noteworthy. The word "terminate" is followed by the connecting word "unless", which qualifies the first part with the subsequent limb of the section i.e. "unless the court has, either prior to or after the expiry of the period so specified, extended the period". The expression "prior to or after the expiry of the period so specified" has to be understood with reference to the power of the court to grant an extension of time.

14. Accordingly, the termination of the arbitral mandate is conditional upon the non-filing of an extension application and cannot be treated as termination *stricto sensu*. The word "terminate" in the contextual form does not reflect termination as if the proceedings have come to a legal and final end, and cannot continue even on filing of an application for extension of time. Therefore, termination under Section 29-A(4) is not set in stone or absolutistic in character.

15. An interpretive process must recognise the goal or purpose of the legal text. Section 29-A intends to ensure the timely completion of arbitral proceedings while allowing courts the flexibility to grant extensions when warranted. Prescribing a limitation period, unless clearly stated in words or necessary, should not be accepted. Bar by limitation has penal and fatal consequences. This Court in *North Eastern Chemicals Industries (P) Ltd. v. Ashok Paper Mill (Assam) Ltd.* 21 observed: (SCC p. 812, para 37)

"37. ... When no limitation stands prescribed it would be inappropriate for a Court to supplant the legislature's wisdom by

its own and provide a limitation, more so in accordance with what it believes to be the appropriate period."

16. Courts should be wary of prescribing a specific period of limitation in cases where the legislature has refrained from doing so. If we give a narrow and restrictive meaning to Section 29-A(4), we would be indulging in judicial legislation by incorporating a negative stipulation of a bar of limitation, which has a severe annulling effect. Such an interpretation will add words to widen the scope of legislation and amount to modification or rewriting of the statute. If the legislature intended such an outcome, it could have stated in the statute that "the Court may extend the period only if the application is filed before the expiry of the mandate of the arbitrator, not after". Indeed, there would have been no need to use the phrase "after the expiry of the period" in the statute. In other words, a rigid interpretation would amount to legislating and prescribing a limitation period for filing an application under Section 29-A, when the section does not conspicuously so state. Rather, the expression and intent of the provision are to the contrary.

17. In our opinion, a restrictive interpretation would lead to rigour, impediments and complexities. A party would have to rush to the court even when the period of arbitral mandate of twelve months has not expired, notwithstanding the possibility of a consent-based extension of six months under Section 29-A(3). Narrow interpretation presents an additional challenge by relegating a **faultless party** to a fresh reference or appointment of an arbitrator under the A&C Act 23, thereby impeding arbitration rather than facilitating it.

(emphasis and underlining supplied)

35) Thus, in paragraph 17 of the judgment in **Rohan Builders** (supra) it is held that narrow interpretation presents an additional challenge by relegating a 'faultless party' to a fresh reference or appointment of an arbitrator under the Arbitration Act. These findings clearly suggest that if mandate of the arbitrator is not extended under Section 29A of the Arbitration Act, the faultless party can seek a fresh reference for appointment of an Arbitrator.

36) Thus, the key is to determine whether the party is at fault or is faultless. If the party is found to be at fault, on account of whose conduct, the Court has refused to extend mandate of an arbitrator under Section 29A (4) of the Arbitration Act, the application for making fresh reference or appointment of arbitrator must necessarily be rejected. On the other hand, if the party applying under Section 11(6) is faultless, its application for appointment of an arbitrator would not only be maintainable but it would be the duty of the Court to appoint the arbitrator for ensuring adjudication of disputes between the parties on merits.

37) Mr. Cama has strenuously urged before me that this Court needs to conduct limited enquiry into the aspect of existence of arbitration agreement and leave the rest of the issues for being decided by the Arbitral Tribunal. It is contended that the objection raised by the Respondents essentially relating to waiver, acquiescence, *res judicata* etc. can be considered and decided by the Arbitrator. Reliance is placed on judgments of the Apex Court in ***State Bank of India General Insurance Company Limited vs. Krish Spinning*** (supra), ***Motilal Oswal Financial Services Limited*** (supra), ***Cox and Kings Ltd.*** (supra) and ***Re: Interplay between arbitration agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*** (supra). I am unable to agree. The enquiry before me is not whether the claims sought to be adjudicated by the Applicant are barred by principles of waiver, acquiescence or *res judicata*. The issue is about exercise of jurisdiction by the referral Court under Section 11(6) of the Arbitration Act. Though there may exist arbitration

agreement between the parties, if the mandate of the arbitral proceedings has been terminated, this Court cannot exercise referral jurisdiction under Section 11(6) of the Arbitration Act and appoint an arbitrator where the reference itself is not in existence. The present application is premised on an assumption as if only the seat of the arbitrator is vacant but the reference and the mandate of the arbitral proceedings continue. This assumption itself is faulty. Neither the chair of the arbitrator is vacant nor the reference is alive. The arbitration proceedings have come to an end and therefore, no arbitrator can be appointed by this Court in exercise of referral jurisdiction under Section 11(6) of the Arbitration Act. Therefore, reliance by Mr. Cama on judgments of the Apex Court in ***SBI General Insurance Company, Motilal Oswal, Cox and King*** and ***Re : Interplay*** (supra) is inapposite. Similar is the position in respect of judgment of this Court in ***Rajuram Sawaji Purohit*** (supra) in which the Award was set aside under the Section 34 of the Arbitration Act and thereafter application under Section 11 of the Arbitration Act was filed for appointment of an arbitrator on lines of Section 43(4) of the Arbitration Act. It was sought to be urged by the Respondent therein that the claim was time barred as Section 34 order was pending challenge before Section 37 Court. It is in the light of those facts that this Court proceeded to exercise referral jurisdiction by appointing the Arbitrator leaving open the issue of limitation. The issue before this Court in ***Rajuram Sawaji Purohit*** (supra) was altogether different and the said judgment has no application to the facts of the present case.

38) In my view therefore, this Court needs to adjudicate the issue as to whether arbitrator can be appointed or not, and the issue cannot be left open to be decided by the arbitrator as once the Arbitral Tribunal is constituted, it cannot decide whether reference made by the Court is valid or not.

39) Mr. Cama has also sought to suggest that the Applicant has invoked the arbitration afresh in respect of a continuous cause of action. He has taken me through contents of notices dated 10 July 2025 and 18 July 2025 in support of his contention that there is a continuous cause of action and that a fresh reference can be made by ignoring the previous round of arbitration in respect of continuous defaults on the part of the Respondent. I am afraid, this argument cannot be accepted. Both the notices refer to previous invocation notice dated 21 December 2018 and state that the same are issued '*in view of the continuing breach*'. Both the notices thereafter refer to the interim order dated 31 August 2020, handing over of possession of five flats in pursuance of the interim Award and failure to comply with further directions in the impugned Award by handing over possession of balance flats and depositing amounts received against sale of two flats in escrow account. Thus, both the notices dated 10 July 2025 and 18 July 2025 specifically refer to the previous round of arbitration. It is therefore, difficult to accept the case of the Applicants that the reference is sought in respect of a fresh cause of action. There is nothing pleaded in the application to the effect that the Applicants are not seeking adjudication of disputes which formed part of previous round of arbitration or that they are seeking adjudication of only those disputes

in respect of which any fresh cause of action has arisen. In fact the contention of 'continuous cause of action' is premised on an assumption that the Applicants also want to arbitrate the disputes covered by previous arbitration, in respect of which the cause continues. It is not the case of the Applicants that arbitration is sought in respect of a 'fresh cause of action' which has arisen after termination of previous arbitral proceedings. The argument of alleged continuous cause of action is thus raised only to seek an escape out of consequence of order passed by this Court on 18 October 2024 and by the Apex Court on 14 February 2025.

40) In view of the discussion above, this Court is unable to make a reference nor can appoint the Arbitrator since the arbitration proceedings have come to an end in the present case.

41) Consequently, the Commercial Arbitration Application is **dismissed**. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]