IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO. 242 of 2026

Supama Realtors LLP and others **...Applicants**

Versus.

Mulchand Kaluchand Ranka and others **...Respondents**

Mr. Akshay Patil with Mr. Vinayak Siraskar, Ms. Karishma Shah & Ms. Devika Mahadekar i/b Kiran Jain & Co., for the Applicants.

Mr. Amit Mehta with Mr. Vedant Rane, for Respondent Nos. 1 to 3.

Ms. Neuty Thakkar with Mr. Dhavall Ghandy i/b Mr. Tushar Goradia, for Respondent Nos. 4 to 9.

CORAM: SANDEEP V. MARNE, J.

Reserved On: 29 April 2026.

Pronounced On: 8 May 2026.

Judgment:

1) This is an application under Section 11 r/w Section 14 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** seeking direction for termination of mandate of the previous arbitrator and for appointment of the substitute arbitrator in the reference stated to be pending between the parties.

2) By order dated 17 September 2014 passed in Arbitration Application No. 113 of 2014, this Court made a reference for adjudication of disputes and differences between the parties for arbitration and appointed Mr. E.P. Bharucha, Senior Advocate of this Court to adjudicate the disputes and differences between the parties in relation to affairs, business and assets of the partnership firm M/s. Shree Ranka Kothari Kanugo Realtors.

3) By further order 17 March 2015 passed in Application No. 332 of 2014 filed by Respondents Nos.4 to 8, this Court referred the disputes and differences between the parties to arbitration by appointing Mr. E.P. Bharucha, Senior Advocate of this Court. Before appointment of the arbitrator, Applicants had filed Arbitration Petition No. 402 of 2014 under Section 9 of the Arbitration Act which was disposed of by orders dated 18 February 2016 and 20 December 2016 appointing Court Receiver in respect of the properties of the Partnership Firm. The Court Receiver was subsequently discharged by order dated 22 October 2019.

4) The arbitration proceedings commenced before the learned sole Arbitrator. The Applicants filed statement of claim and the Respondents filed their respective statement of defence and counterclaims. Affidavits of evidence were also filed by the respective parties. The last meeting of arbitration was held on 25 July 2017. According to the Applicant, settlement talks were thereafter held between the parties and parties met on many occasions to resolve the disputes. According to the Applicants, the arbitration proceedings were at the stage of conducting cross-examination of Applicant's witness.

However, parties jointly sought adjournments from time to time before the learned Arbitrator on account of settlement talks.

5) The Applicants contend that the settlements talks could not fructify due to noncooperation from Ranka Group and there were also no progress in the Project.

6) In the above background, Mr. Pradeep D. Kanugo (Respondent No.6) on behalf of Kanugo Group addressed email to the learned sole Arbitrator informing him about (i) demise of his father and need to bring his heirs and representatives on record (ii) of continued non-co-operation of Ranka Group in inducting the heirs into partnership firm, (iii) his desire to resume arbitration proceedings (iv) partnership firm losing in various litigations on account of non-contribution of funds by Respondent No.1 (v) his intention of taking out various applications in the arbitral proceedings through fresh advocate and (vi) request for scheduling a meeting by the learned sole arbitrator for deciding the further conduct of arbitral proceedings.

7) Applicants claim that the learned Arbitrator did not give any response to the email of Respondent No. 7. Since no communication is received to the email dated 2 January 2026 from the learned sole Arbitrator, Applicants made inquiries from his office and received verbal intimation that the learned sole Arbitrator is now of advanced age and is not in a position to actively conduct and conclude the arbitration proceedings. In the above background, Applicants have filed the present Application under the provisions of Section 11 r/w Section 14 of the

Arbitration Act for appointment of a substitute arbitrator The prayers in the Application read thus:

> a) this Hon'ble Court be pleased to terminate the mandate of Mr. E. P. Bharucha, Senior Advocate, as the Sole Arbitrator in the arbitration proceedings arising out of disputes in relation to the affairs, business and assets of the Partnership firm M/s. Shree Ranka Kothari Kanugo Realtors;
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> d) this Hon'ble Court be pleased to pass appropriate orders/directions to appoint a substitute arbitrator under Section 11 r/w. Section 14 of the Arbitration and Conciliation Act, 1996 in the arbitration proceedings pending between the Applicants and the Respondents and continue the same from the stage it had come to;
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> c) this Hon'ble Court be pleased to appoint a fresh arbitrator from list of arbitrators provided hereinabove or any other suitable person as the Sole Arbitrator in place of Mr. E. P. Bharucha, Senior Advocate, to enter into reference and continue the arbitration proceedings from the stage already reached in relation to the affairs, business and property of the Partnership firm M/s. Shree Ranka Kothari Kanugo Realtors;
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> d) for costs of the Application; and
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> e) for such other and further reliefs as the nature and circumstances of the case may require.

8) Mr. Akshay Patil the learned counsel appearing for the Applicant submits that substitution of the learned arbitrator is necessitated on account of his inability to conclude the arbitral reference due to advanced age. That the learned Arbitrator has not responded to specific request made by Respondent No.6 for resumption of arbitration proceedings. Mr. Patil further submits that the reference to the arbitration is made before coming into effect of the 2015 amendment to Arbitration Act. That at the relevant time, there was no prescribed time limit for conclusion of arbitral proceedings and that there is no requirement of extension of mandate by the Court. That Section 29A

introduced w.e.f 23 October 2015 has prospective effect and cannot be applied to the arbitration commenced earlier. In support, he relies on judgment of the Apex Court in ***Board of Control for Cricket in India Versus. Kochi Cricket Private Limited and others***[1].

9) Mr. Patil further submits that while making reference to arbitration, this Court has used the expression 'shall endeavour' while indicating the period of 9 months. That use of the word 'endeavour' cannot be construed as mandatory, time bound, condition precedent to exercise of arbitrator's jurisdiction. He submits that the legal position of the word 'endeavour' in the context of termination of mandate of arbitrator has been settled by the Apex Court. That Section 29A is applicable to international commercial arbitration which uses the word 'endeavour' and that in ***Tata Sons Private Limited Versus. Siva Industries and Holdings Limited and others***[2]**,** the Apex Court has held that the provision of Section 29A is directory in nature. He further submits that the parties themselves never considered that arbitrator's mandate will get automatically extinguished after expiry of period of 9 month from the date of making reference. That the proceedings therefore continued to subsist in law and the application is maintainable on the ground of *de-facto* inability under Section 14 of the Arbitration Act.

10) Mr. Patil further submits that the arbitration does not stand abandoned as falsely contended by the Respondent-Ranka Group. That abandonment requires a clear, unequivocal and demonstrable intention

1 2018 6 SCC 287
2 2023 (5) SCC 421

of a party to relinquish its right to pursue the reference. That such intention cannot be inferred from mere passage of time, delay or failure to seek dates. That email dated 2 January 2026 sent by Respondent No.6 on behalf of Kanugo Group constitutes an express 'affirmation of intention to resume the arbitral proceedings'. That the contesting Respondent-Ranka Group did not oppose the request in email dated 2 January 2026. He submits that the hiatus in the proceedings from July 2017 onwards was mutual and consensual. That it is a cardinal principle of procedural law that abandonment being akin to form of waiver or election is required to be specifically pleaded in the pleadings by the party asserting it and that bald allegation of abandonment unsupported by particulars, is liable to be rejected at the threshold. That the burden of proving abandonment rests squarely and entirely on Ranka Group. He relies on judgment of the Apex Court in ***Dani Wooltex Corporation and others Versus. Sheil Properties Private Limited and another***[3] in support of his contention that abandonment of arbitral proceedings cannot be lightly inferred.

11) Mr. Patil relies on provision of Section 25 of the Arbitration Act submitting that the appropriate remedy for the contesting Respondents was to approach the Tribunal under Section 25 for seeking dismissal of reference for default. That the Tribunal has not terminated the proceedings on the ground that they have become unnecessary or impossible. He submits that there is a distinction between termination of mandate of proceedings and termination of mandate of arbitrator. That in the present case only the mandate of the arbitrator needs to be

3 2024 7 SCC 1

terminated by substituting him while the mandate of the arbitral proceedings would still continue. He therefore prays for appointment of a substitute arbitrator.

12) Ms. Thakkar, the learned counsel appearing for Respondents Nos. 4 to 9 (Kungo Group) has not opposed the arbitration application and has supported the application.

13) *Per contra* Mr. Mehta the learned counsel appearing for Respondents Nos.1 to 3 (Ranka Group) has strenuously opposed the application submitting that the arbitration proceedings/reference is not alive and is abandoned by parties. That though no time limit was fixed at the relevant time under the Arbitration Act for making the award, the parties were bound by order dated 17 September 2014 which mandated making of the Award within a period of 9 months. That for 9 long years, no communication was sent to the arbitrator for proceeding ahead with the reference. That email dated 2 January 2026 was not even marked to Ranka Group. That the mandate of the arbitrator has not been extended by any order of the Court. That once this Court had stipulated time limit for making of an award, Applicants ought to have approached this Court for seeking extension of time. On the basis of conduct of all the parties during the last 9 long years, it needs to be inferred that the parties have abandoned the arbitration reference. He relies on judgment of this Court in ***Nalin Vallabhbhai Patel and another Versus. Athrava Realtors and others***[4] in support of his submission that arbitration proceedings have been abandoned and abandoned proceedings cannot be revived by filing

4 CARBP- 430 of 2025 decided on 1 April 2026

fresh application under Section 11 read with Section 14 of the Arbitration Act. He prays for dismissal of the Application.

14) The rival contentions raised on behalf of the parties now fall for my consideration.

15) The short issue that arises for considerations in the present application is whether the mandate of arbitral proceedings continues or whether the arbitration is abandoned and whether this Court can substitute the Arbitrator by exercising powers under Section 11 read with Section 14 of the Arbitration Act.

16) The reference to the arbitration was made initially by order dated 17 September 2014 by which all disputes arising out of partnership deed dated 14 October 2010 between the parties were referred to the sole arbitration of Mr. E.P. Bharucha, Senior Advocate. The order directed the learned Arbitrator to endeavour to pass his award within a period of 9 months from the date of his first meeting. The order dated 17 September 2014 reads thus:

> 1. Heard the learned Advocates appearing for the parties and the following order is passed by consent :
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> i. The disputes arising out of the Partnership Deed dated 14th October, 2010 between the parties are referred to the sole Arbitration of Mr. E.P. Bharucha, Senior Advocate.
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> ii. The parties shall appear before the learned Arbitrator in his chambers, on 22nd September, 2014 at 5.00 p.m. and obtain necessary directions.

iii. The learned Arbitrator shall endeavour to pass his Award within a period of nine months from the date of the first meeting held before him by the parties.

iv. The cost of arbitration shall initially be borne by all the three parties equally.

v. All issues/contentions including arbitrability of disputes of the parties are kept open.

The above Arbitration Application is accordingly disposed of.

17) It appears that another application was filed by Dhawalchand Chaganlal Kanugo (Arbitration Application 332 of 2014) under Section 11 of the Arbitration Act, in which this Court passed order on 17 March 2015 referring the disputes and differences arising between Kanugo Group and Ranka Group to sole arbitration of Mr. E.P. Bharucha, Senior Advocate. By the time both the references were made on 17 September 2014 and 17 March 2015, the Act of 3 of 2016 amending the Arbitration Act was yet to come into force. The amendments to Arbitration Act came into force w.e.f. 23 October 2015 when *inter-alia* Section 29A was inserted in the Arbitration Act. It now prescribes a time limit of 12 months for making of award in domestic arbitration from the date of completion of pleadings. Prior to 23 October 2015, there was no provision in the Arbitration Act prescribing any time limit for making of the final award. It is now well settled position that provisions of Section 29-A of the Arbitration Act apply prospectively as held by the Apex Court in ***Board of Control for Cricket in India*** (supra).

18) In the light of absence of any statutory time limit for making of final award, the Respondent-Ranka Group seeks to rely upon the direction contained para-1(iii) of order dated 17 September 2014,

which directed the learned Arbitrator to make an endeavour to pass his award within a period of 9 months from the date of first meeting held before him. It appears that no such direction was issued while making second reference in respect of the disputes and differences between Kanugo Group and Ranka Group vide order dated 17 March 2015.

19) In my view, the direction issued in para-1(iii) of order dated 17 September 2014 for making an 'endeavour' to pass the award within 9 months cannot be treated as specification of a time-mandate in respect of the arbitral proceedings. Mere direction for making an endeavour to complete arbitral proceedings in specified time does not tantamount to issuance of positive direction resulting in a consequence for not following the same. The issue is otherwise no more *res-intergra*. Section 29A introduced w.e.f. 23 October 2015 and which applies to international commercial arbitration uses the expression '*endeavour may be made to dispose of the matter within a period of 12 months*'. The said expression is incorporated by the Apex Court in ***Tata Sons Private Limited*** (supra) in which it is held in para-34 to 36 of the judgment as under:

> **34.** The 2019 Amendment Act does not contain any provision equivalent to Section 26 of Act 3 of 2016 evincing a legislative intent making the application of the amended provision prospective. The amended provisions of Section 29A, in terms of which the arbitral tribunal has to endeavour to dispose of the proceedings in an international commercial arbitration as expeditiously as possible within a period of twelve months from the completion of the pleadings are remedial in nature. The amended provision has excepted international commercial arbitrations from the mandate of the twelvemonth timeline which governs domestic arbitrations. The amendment is intended to meet the criticism over the timeline in its application to international commercial arbitrations. The amendment is remedial in that it carves out international commercial arbitrations from the rigour of the

timeline of six months. This lies within the domain of the arbitrator and is outside the purview of judicial intervention. The removal of the mandatory time limit for making an arbitral award in the case of an international commercial arbitration does not confer any rights or liabilities on any party. Since Section 29A(1), as amended, is remedial in nature, it should be applicable to all pending arbitral proceedings as on the effective date i.e., 30 August 2019.

35. We may notice certain judgments of the High Courts on the provisions of Section 29A which have been adverted to during the course of oral submissions. Those decisions are:

i. A decision of a Single Judge of the High Court of Delhi dated 23 January 2020 in Shapoorji Pallonji & Co. Pvt. Ltd. Vs Jindal India Thermal Power Ltd.;

ii. A decision of a Single Judge of the Delhi High Court dated 21 July 2020 in ONGC Petro Additions Ltd. vs Ferns Construction Co. Inc.; and

iii. The decision of the Chief Justice of the High Court of Judicature for Orissa at Cuttack dated 11 December 2020 in M/s SARA International Pvt. Ltd. Vs Southern Eastern Railways & Anr.

36. In Shapoorji Pallonji, the Delhi High Court had held that amended Section 29A(1) of the Arbitration and Conciliation Act, being procedural law, would apply to the pending arbitrations as on the date of the amendment. However, a coordinate bench in MBL Infrastructures Ltd v. Rites Ltd.18 held that the amended Section 29A would be prospective in nature, without referring to the earlier order in Shapoorji Pallonji. Finally, the Delhi High Court in ONGC Petro Additions settled the controversy and reiterated the position of law as laid down in Shapoorji Pallonji. The Court, inter alia, stated that Section 29A(1) shall be applicable to all pending arbitrations seated in India as on August 30, 2019 and commenced after October 23, 2015, and there is no strict time line prescribed to the proceedings which are in nature of international commercial arbitration as defined under the Act, seated in India.

20) Thus it is settled position that in relation to international commercial arbitration, use of the expression '*endeavour may be made to dispose of the matter within a period of 12 months'* does not mean a mandatory prescription of time-limit and the specified period is merely directory.

21) Even otherwise, the parties themselves never treated the period of 9 months contemplated in para-1(iii) of the order dated 17 September 2014 to be the maximum permissible time limit for conclusion of arbitral proceedings. The arbitral meetings took place upto 25 July 2017 i.e. well past the period of 9 months. In the meeting held on 25 July 2017, parties (including Ranka Group) jointly requested for adjournment on account of settlement talks. Ranka Group thus did not take a position that the arbitral proceedings were terminated within the meaning of Section 32 of the Arbitration Act upon expiry of period of 9 months from the date of first meeting in the reference.

22) Though this Court is not inclined to accept the contention of Respondent-Ranka Group that arbitral proceedings were required to be concluded within 9 months, at the same time, it is seen that no further proceedings/ meetings were conducted in the reference after the meeting of 25 July 2017. From 26 July 2017 till 2 January 2026, when the Respondent wrote an email to the learned arbitrator, nothing transpired in the arbitral proceedings. The issue for consideration is whether it can be concluded that parties have abandoned the arbitral proceedings by their conduct and that therefore appointment of substitute arbitrator cannot be made?

23) There is marked difference between the concepts of termination of mandate of the arbitrator under Section 14 and termination of arbitral proceedings under Section 32. Sections 14 and 15 of the Arbitration Act 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 maybe 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.

24) As contradistinct from termination of mandate of the ‘arbitrator’ under Sections 14 and 15 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.

25) This difference between the concepts of termination of mandate of arbitrator and termination of arbitration proceedings is noted by this Court in ***Nalin Vallabhbhai Patel*** (supra) in which this Court has considered various judgments on the issue and it has been held in paras-24 and 25 of the judgment as under:

> **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:
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> > 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.**
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> 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.
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> 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.
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> 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.**
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> 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.

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.
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> *(emphasis added)*

26) When the reference is alive, but the mandate of the arbitrator terminates, the Court can exercise powers under Sections 14 and 15 read with Section 11 of the Arbitration Act to substitute the arbitrator. However, once the arbitral proceedings terminate under Section 32 of the Act, substitute arbitrator cannot be appointed. Under Section 32, the arbitral proceedings terminate either by making of final

award or by reasoned order made by the Arbitral Tribunal under Section 32(2). The Arbitral Tribunal can issue an order for termination of arbitral proceedings when (i) the claimant withdraws from the claim, (ii) the parties agree on termination of proceedings or (iii) where the Tribunal finds that continuation of proceedings has for any other reason become unnecessary or impossible.

27) In the present case, neither final award is made by the Tribunal nor the Tribunal has made an order under sub-section 2 of Section 32.

28) In ***Dani Wooltex Corporation***, the case involved reference of disputes to the Arbitral Tribunal in a suit filed by Marico Industries **(Marico)**. Another reference was made to arbitration in suit filed by Sheil Properties **(Sheil)**. Thus, both Sheil and Marico had claims against Dani Wooltex Corporation. Both Sheil and Marico filed their respective statements of claim. The reference in Marico's claim culminated into final award. However, arbitral proceedings based on Sheil's claim did not proceed. In such background, Dani Wooltex Corporation addressed communication to the Arbitral Tribunal for dismissal of Sheil's claim on the ground that Sheil had abandoned the claim. The Tribunal fixed meeting on 11 March 2020, which was not attended by Sheil. In subsequent meeting, the Tribunal directed Dani Wooltex Corporation to file application seeking dismissal of Sheil's claims. When such application was filed seeking dismissal of Sheil's claim on account of abandonment of arbitral proceedings, Sheil opposed the same. The Tribunal however passed order terminating the arbitral proceedings in

exercise of powers under Section 32(2)(c) of the Arbitration Act. The Single Judge of this Court had set aside the order of termination of proceedings and directed Arbitral Tribunal to continue the proceedings. The Apex Court has upheld the order passed by this Court.

29) In the above factual background, in ***Dani Wooltex Corporation***, the Apex Court has held that the failure of a party to appear before the Arbitrator after filing of the claim, does not render the proceedings unnecessary or impossible. It has held that it is Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request. It has further held that failure of the claimant to request the Arbitral Tribunal to fix a date for hearing *per-se* is not a ground to conclude that the proceedings have become unnecessary. The Apex Court has also decided the issue as to when abandonment can be treated as a ground for termination of arbitral proceeding The Apex Court has held in paras-17, 23, 24 and 25 of the judgment as under:

> **17.** Therefore, clause (c) of sub-section (2) of Section 32 can be invoked for reasons other than those mentioned in sub-section (1) of Section 32 and clauses (a) and (b) of sub-section (2) of Section 32. Under clause (c), the mere existence of a reason for terminating the proceedings is not sufficient. The reason must be such that the continuation of the proceedings has become unnecessary or impossible. In a given case, when a claimant files a claim and does not attend the proceedings, clause (a) of Section 25 comes into operation, resulting in the learned arbitrator terminating the proceedings. If, after filing a claim, the claimant fails to appear at an oral hearing or fails to produce documentary evidence, it cannot be said that the continuation of proceedings has become unnecessary. If the claimant fails to appear at an oral hearing after filing the claim, in view of clause (c) of Section 25, the learned arbitrator can proceed with the arbitral proceedings. The fact that clause (c) of Section 25 enables the Arbitral Tribunal to proceed in the absence of the claimant shows the legislature's intention that the claimant's failure to appear after filing the claim cannot be a

ground to say that the proceedings have become unnecessary or impossible.

23. The question is whether Sheil abandoned its claim filed before the learned arbitrator. As stated earlier, Sheil regularly attended meetings held to hear Marico's claim. During the period during which the claim of Marico was heard, at no stage, the learned arbitrator suggested that the claim of Sheil could be heard simultaneously. On the contrary, from the conduct of the parties and the learned arbitrator, an inference can be drawn that Marico's claim was given priority. Two meetings were convened in March 2020 in connection with Sheil's claim. In March 2020, COVID-19 was spreading its wings in our country. The second meeting in March 2020 was admittedly not held. In any case, there is no express abandonment. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. In the facts of the case, there was no abandonment either express or implied.

24. In a case where the claim is abandoned, the learned arbitrator can take the view that it would be unnecessary to continue the proceedings based on the already abandoned claim. In this case, the inference of the abandonment has been drawn by the learned arbitrator only on the grounds that Sheil did not challenge the Marico award and took no steps to convene the meeting of the Arbitral Tribunal. The failure to challenge the award on Marico's claim will not amount to abandonment of the claim filed by Sheil in January 2012. In the claim submitted by Sheil, a prayer was made in the alternative for passing an award in terms of money against the first appellant. Therefore, we hold that there was absolutely no material on record to conclude that Sheil had abandoned its claim or, at least, the claim against the first appellant. Till the award dated 6-5-2017 was passed in Marico's claim, Sheil's representative was always present at all hearings till the passing of the award. After the award, the learned arbitrator never convened a meeting to deal with Sheil's claim until 11-3-2020. Hence, the finding of the learned arbitrator that there was abandonment of the claim by the first appellant is not based on any documentary or oral evidence on record. The finding is entirely illegal. Such a finding could never have been rendered on the material before the Arbitral Tribunal. Thus, the learned arbitrator committed illegality.

25. To conclude:

25.1. The power under clause (c) of sub-section (2) of Section 32 of the Arbitration Act can be exercised only if, for some reason, the continuation of proceedings has become unnecessary or impossible. Unless the Arbitral Tribunal records its satisfaction based on the material on record that proceedings have become unnecessary or

impossible, the power under clause (c) of sub-section (2) of Section 32 cannot be exercised. If the said power is exercised casually, it will defeat the very object of enacting the Arbitration Act;

25.2. It is the Arbitral Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request. It is the duty of the Arbitral Tribunal to adjudicate upon the dispute referred to it. If, on a date fixed for a meeting/hearing, the parties remain absent without any reasonable cause, the Arbitral Tribunal can always take recourse to the relevant provisions of the Arbitration Act, such as Section 25;

25.3. The failure of the claimant to request the Arbitral Tribunal to fix a date for hearing, per se, is no ground to conclude that the proceedings have become unnecessary; and

25.4. The abandonment of the claim by a claimant can be a ground to invoke clause (c) of sub-section (2) of Section 32. The abandonment of the claim can be either express or implied. The abandonment cannot be readily inferred. There is an implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his/her claim can an inference of abandonment be drawn. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. Only because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, the failure of the claimant, per se, will not amount to the abandonment of the claim.

(emphasis added)

30) Thus, the Apex Court in ***Dani Wooltex Corporation*** has recognized abandonment of the claim by a claimant as a ground to invoke clause (c) of sub-section 2 of Section 32. It has held that abandonment of the claim can either be express or implied but the same cannot be readily interfered. Arbitration can be impliedly abandoned when admitted or true facts are so clinching that the only inference that can be drawn is of abandonment. It is only when established conduct of the claimant is such that it leads to only one conclusion that the

claimant has given up his/her claim and an inference of abandonment can be drawn.

31) Applying the ratio of the judgment of the Apex Court in ***Dani Wooltex Corporation***, it is seen that mere failure on the part of the Applicants/Claimants in seeking fixation of dates of meeting can not *ipso-facto* attract the ground under Section 32(2) of the Arbitration Act. However, at the same time, the conduct of the Claimants during the past 9 years has been such that the only inference that can be drawn would be that of abandonment. In the entire application, Applicants have not referred to any event taking place from 25 July 2017 to 2 January 2026 concerning the arbitral proceedings. Only vague pleadings relating to settlement talks are raised. It is incomprehensible that settlement talks can go on for 9 long years. It is not that the Applicants were writing to the learned arbitrator about progress of the settlement talks or have even kept the arbitrator informed about settlement talks happening. If the Applicants were serious enough in prosecuting the claim, they would have written at least once to the learned Arbitrator that fixation of dates in the arbitral proceedings were not being sought on account of negotiations happening between the parties. Also, no material is placed on record to indicate that the parties met each other for holding negotiations. During 9 long years, no party has even bothered to approach the learned Arbitrator intimating him about the reason for not seeking fixation of arbitral meetings.

32) The factual situation in ***Dani Wooltex Corporation*** is entirely different than the one involved in the present case. In case

before the Apex Court there were 2 claims of Marico and Sheil and the Apex Court has held that the arbitrator never suggested that the claim of Sheil could he heard simultaneously. The Apex Court on the other hand has held that Marico's claim was given priority. It is in these peculiar circumstances, that the Apex Court did not find convincing circumstances leading to an inevitable inference about abandonment of arbitral proceedings. In the present case, however the Applicants did not take any steps for prosecution of the arbitral proceedings after 25 July 2017 and have virtually abandoned the same.

33) Also curious to note is the fact that the Applicants, by themselves, have not expressed any interest in prosecuting the claim. The email dated 2 January 2026 is addressed by Respondent No.6, who is the legal heir of deceased partner late Dhawalchand Chaganlal Kanugo. Respondent No.6 was apparently not a party to the arbitral proceedings nor has filed any application for bringing him on record as legal heir of late Dhawalchand Chaganlal Kanugo. By order dated 17 March 2015, separate reference was made in respect of Dhawalchand Chaganlal Kanugo. Be that as it may, the present application is essentially filed by partners belonging to Kanugo Group and none of the Applicants ever approached the Arbitral Tribunal for resumption of the arbitral proceedings. They cannot bank on email dated 2 January 2026 by Respondent No.6 who were themselves a party to the arbitral proceedings.

34) In my view therefore the inescapable conclusion that emerges is that the arbitral proceedings are abandoned by the Applicants

and the proceedings are terminated under Section 32(2)(c) of the Arbitration Act.

35) Since arbitral proceedings are terminated under the provisions of Section 32(2)(c) of the Arbitration Act, this Court is unable to substitute the arbitrator in exercise of powers under Section 11 or under Section 14 of the Arbitration Act. The Application accordingly fails. The same is **dismissed** with no order as to costs.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT
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