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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 51 of 2025

THE BOMBAY ST XAVIERS COLLEGE SOCIETY.Applicant

Versus

MANISHA CATERERSRespondent

Mr. Abhishek Ingale a/w. Pradeep Kumar, Divya Yujurvedi and
Sudeshkumar Naidu i/b C.R Naidu & Co., for Applicant.

Ms. Kajal Gupta a/w. Shweta Singh i/b M.V. Kini & Co., for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : January 22, 2025

P. C.

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (*“the Act”*), seeking an appointment of an arbitrator pursuant to an arbitration agreement contained in a conducting agreement dated August 3, 2017 between the parties.

2. Today, when the matter is called out, Learned Counsel for the parties submit that there was a dispute raised by the Respondent about whether the document in question evidences an existence of a tenancy, thereby ousting the jurisdiction of forums other than the Small Causes Court. It appears that

the Small Causes Court ruled in favour of having jurisdiction in the matter, and in Writ Petition No. 3672 of 2024, by an order dated December 16, 2024, a Learned Single Judge of this Court was pleased to hold that the disputes are amenable to arbitration.

3. Today, when the matter is called out, Learned Counsel for the Respondents submits that a Special Leave Petition challenging the order of the Learned Single Judge of this Court in Writ Petition No. 3672 of 2024 is being pursued. She seeks a reasonable period of time to enable filing and moving such Special Leave Petition. Should the Supreme Court entertain the Special Leave Petition and stay the order dated December 16, 2024, it would not be possible to process this Application. But on the other hand, should the Supreme Court not entertain the Special Leave Petition or issue notice on it, but not pass a stay order on the Special Leave Petition, this Application would need to be considered.

4. Consequently, stand over to ***February 27, 2025***, by which date it would be expected that Learned Counsel for the Respondent would apprise the Court about the status of the Special Leave Petition, if any, and the outcome.

5. It is made clear that the Application will be finally dealt with on the next date, depending on the update about the status of the Special Leave

Petition proposed to be filed. It is made clear that should there be no injunction, the parties may indicate the identity of any arbitrator before whom they would be willing to arbitrate, unless, of course, the Respondent is able to show the non-existence of an arbitration agreement.

6. Learned Counsel for the Respondent also seeks liberty to file a reply articulating as to why the Respondent has denied the existence of an arbitration agreement. Let an affidavit in reply be filed restricting the Respondent's submissions in such affidavit to the scope of Section 11(6A) of the Act, on or before the next date.

7. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]