Sr. No.2

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CM(8178/2025) IN Arb P 5/2022
CM(1854/2026)
c/w
i)WP(C) 2394/2024
CM(1065/2025) CM(2185/2026)
CM(6433/2024)

KUCHAY CONSTRUCTION, PWD CONTRACTOR(SENIOR CITIZEN) …Petitioner(s)/appellant(s)

Through: Mr. Manzoor Ahmad Dar, Advocate with
Mr. Luqman S Dar, Advocate &
Mr. Javaid Ahmad, Advocate

Vs.

THE CHIEF ENGINEER AND ORS. (JAL SHAKTI / PHE DEPARTMENT) ...Respondent(s)

Through: Mr. A.R. Malik, Sr. AAG with
Mr. Zahid Qais Noor, GA

CORAM:

HON'BLE THE CHIEF JUSTICE

O R D E R
30.10.2026

1. This Court is hearing CM No. 8178/2025 in Arbitration Petition No.5 of 2025. The Hon'ble Coordinate Bench of this Court, vide order dated 07.08.2026, directed that the instant CM be listed along with Writ Petition No.2394/2024. Consequently, both the matters have been tagged together and are being argued jointly.

2. The prayer in the CM is as follows:

a) "That the parties have been litigating in the matter before the learned Arbitrator for a considerable period and, as such, considerable time, energy and financial resources have been consumed. In view of the fact that the proceedings are at the final stage, it would be expedient in the interest of justice to allow the application and grant an extension of time for a period of four months from the date of grant of this application. The intervening

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period may also be condoned/regularized for facilitating the learned Arbitrator in finalising the award.

b) That there exists no legal impediment for this Hon'ble Court to grant the application in light of the dismissal of the application seeking termination of the arbitral proceedings.

c) That the ends of justice would be met by allowing the instant application.

d) *That no prejudice whatsoever would be caused to either of the parties by allowing the application."*

3. The prayer in the writ petition is as follows:

> *I) Issue an appropriate writ, order or direction quashing the impugned orders dated 23.08.2024 and 03.09.2024 passed by the learned Sole Arbitrator, M.A. Chashoo (Advocate), in the arbitration titled* Kuchay Constructions PWD v. Chief Engineer, PHE and Others.
>
> *II) Any other writ, order or direction which this Hon'ble Court may deem fit and proper may also be issued in favour of the petitioner and against the respondents.*

4. The prayer in the CM is for an extension of the mandate of the learned Arbitrator. Learned counsel appearing for Kuchay Constructions submits that, after the arbitration proceedings commenced in tandem with the order passed under Section 11(6) of the Arbitration and Conciliation Act, 1996, the matter proceeded until the learned Arbitrator passed an order allowing the summoning the witness Mr. Fayaz Ahmad Yatoo, the then Assistant Executive Engineer, Sumbal Division, vide order dated 05.12.2023.

5. Learned counsel for the Union Territory informed the learned Arbitrator that a writ petition bearing No. 2394/2024 had been filed and was pending consideration before this Court. Simultaneously, Kuchay Constructions filed an application seeking an extension of time. However, the learned Arbitrator stopped the proceedings on the ground that the matter was sub judice before this Court in Writ Petition No. 2394/2024.

6. Since the questions arising in both the matters are intricately connected, both the issues have been tagged together and are being argued jointly.

7. The core question arises in the writ petition, in which the impugned orders dated 23.08.2024 and 03.09.2024 passed by the learned Arbitrator are under challenge, whereby the power of the Arbitrator to summon a witness during the course of arbitral proceedings has been questioned. Since the filing and

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pendency of the writ petition resulted in the stoppage of the arbitral proceedings, therefore, extension of the time of the arbitration proceedings is a subsequent issue arising out of the determination of the writ petition.

8. Learned counsel for the Union Territory, Mr. Malik, has drawn the attention of this Court to the order dated 05.12.2023, in which the learned Arbitrator had allowed the application of the claimant to summon one Mr. Fayaz Ahmad Yatoo, the then as Assistant Executive Engineer, PHE, Sub-Division Sumbal, for examination in support of the claimant's case.

9. Learned counsel for the Union Territory submits that such summoning would not be sustainable in the eyes of law in view of Section 27 of the Arbitration and Conciliation Act, 1996, which prescribes a procedure for summoning of witnesses with the assistance of the Court.

10. Learned counsel for the Union Territory has further taken this Court to the impugned order dated 23.08.2024, whereby the application seeking recall of the order of summoning was decided by the learned Arbitrator and, while affirming the earlier order dated 05.12.2023, the witness, namely, Fayaz Ahmad Yatoo, the then Assistant Executive Engineer, was allowed to be summoned at the expense of the claimant.

11. Learned counsel for the appellant submits that the power to summon a witness was not within the powers of the Arbitrator and that, even if such a summons were issued, then also the learned Arbitrator should have clarified that the witness was not compelled to appear or depose through any process issued by the Tribunal itself.

12. Learned counsel appearing for Kuchay Constructions, however, submits that Section 19 of the Act of 1996 confers ample powers upon the Arbitrator, who adopts its own procedure, and, therefore, the summoning of the said witness was in tandem with the law in vogue.

13. Learned counsel for Kuchay Constructions further submits that, once the learned Arbitrator had independently applied his mind in exercise of the powers under Section 19 of the Act of 1996, it was the incumbent upon the Union Territory to comply with the directions so issued rather than seeking remedies to avoid compliance with the order so made by the learned Arbitrator.

14. Learned counsel further submits that, in the interest of justice and having regard to the scheme of the arbitration law, it is necessary to confer greater

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independence upon the Arbitrator, as envisaged under Section 19 of the Act of 1996, and, thus, any procedure adopted by the Arbitrator ought to be sustained so that the Arbitrator may pass reasoned and justifiable orders by adopting a judicious approach.

15. Learned counsel for the Union Territory, Mr. Malik, has, however, vehemently opposed the aforesaid submissions on the ground that the procedure under Section 19 could have been adopted only so long as it was not in contrary to or in conflict with the procedure specifically provided under the Act, and, once a procedure for seeking assistance of the Court in taking evidence is provided under Section 27 of the Act, it is not open to the Arbitrator to repeatedly pass orders which have the effect of compelling a witness to depose without following the procedure prescribed therein.

16. After hearing the submissions advanced by learned counsel for the parties, the limited questions which arise for consideration before this Court are:

> *(a) Whether an Arbitrator has the power to summon a witness during the course of arbitral proceedings?*
>
> *(b) Whether, in the event such a witness does not appear, the Arbitrator has the power to compel his attendance?*

17. After answering the aforesaid two questions, this Court shall consider the issue of extension of the mandate of the learned Arbitrator beyond the statutory period.

18. The limited controversy before this Court, therefore, is that the claimant, Kuchay Constructions, sought the summoning of a witness, namely, Mr. Fayaz Ahmad Yatoo, posted as Assistant Executive Engineer, PHE, Sub-Division Sumbal, which request was acceded to by the learned Tribunal and summons were issued vide order dated 05.12.2023.

19. The Union Territory filed an application seeking recall of the order dated 05.12.2023, which was reconsidered and reaffirmed by the learned Tribunal vide order dated 23.08.2024, whereby the learned Arbitrator maintained the order dated 05.12.2023, and that the witness, namely, Fayaz Ahmad Yatoo, be summoned at the expense of the claimant.

20. The reiteration of the earlier order, particularly when the same was sought to be recalled in the interest of justice and the Union Territory was also seeking its recall on the ground that it should not be compelled to secure the

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attendance of the said witness, the learned Arbitrator, thus, arrived at a conclusion that, by reiterating the earlier order and rejecting the prayer for not compelling the witness to appear, the learned Arbitrator effectively arrived at the conclusion that the witness ought to be summoned.

21. This Court has carefully examined Section 19 of the Arbitration and Conciliation Act, 1996, which reads as follows:

> ***"Section 19 – Determination of rules of procedure***
>
> *"(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.*
>
> *(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.*
>
> *(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.*
>
> *(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."*

22. Thus, the determination of the rules of procedure is not governed by the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872, whereas the parties would be free to agree upon the procedure to be followed by the Arbitral Tribunal and, in the absence of such an agreement, the Arbitral Tribunal has the power to conduct the proceedings in the manner it considers appropriate.

23. The powers of the Tribunal include the power to determine the admissibility, relevance, materiality and weight of any evidence. Thus, the legislature envisaged broad procedural powers under Section 19 to the Arbitral Tribunal, with the parties having the liberty to arrive at a conclusion regarding the procedure to be followed, while the Tribunal is not being bound by the Code of Civil Procedure or the Indian Evidence Act. Thereafter, this Court has carefully examined Section 27 of the Act, which deals with the power of the Arbitral Tribunal to seek assistance of the Court in taking evidence.

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> ***Section 27 – Court assistance in taking evidence****--(1) provides that the Arbitral Tribunal, or a party with the approval of the Arbitral Tribunal, may apply to the Court for assistance in taking evidence.*
> *(2) The application shall specify---*
> *(a) the names and addresses of the parties and the arbitrators,*
> *(b) the general nature of the claim and the relief sought,*
> *(c) the evidence to be obtained, in particular,__*
> *(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;*
> *(ii) the description of any document to be produced or property to be inspected..*
> *(3) The Court may, within its competence and according to the rules applicable to taking evidence, execute the request by ordering that the evidence be provided directly to the Arbitral Tribunal.*
> *(4) The Court may, while making such an order, the Court may issue the same processes to witnesses as it may issue in suits tried before it.*
> *(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.*
> *(6) in this section the expression " Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.*

24. Accordingly, the power has been conferred upon the Court, as defined in the Act of 1996, to execute the request of the arbitrator for taking evidence with the authority to issue process to witness in accordance with law.

25. This Court has also taken into consideration the judgment relied upon by the learned counsel for Kuchay Constructions, which is ***Silor Associates S.A. v. Bharat Heavy Electricals Ltd., rendered by the Hon'ble High Court of Delhi and reported as 2014 Legal Eagle (DEL) 913***.

26. This Court has perused the aforesaid judgment, particularly paragraphs 15 to 20, 26, 27, 29 to 31, 40 to 42, as well as paragraph 38(83) thereof. The relevant observations recorded therein are reproduced hererinbelow:-

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"……..15*. While hearing a petition under Section 27 of the Act, no doubt, I am not hearing an appeal from the order passed by the Tribunal. An appeal from an order passed by the Tribunal is maintainable only in terms of Section 37(2) of the Act, and not otherwise. But that does not mean that when an order passed by the Tribunal invoking Section 27 of the Act, to seek the assistance of the Court in taking evidence, is placed before the Court, the Court would simply act on the request of the Tribunal, even if it appears to the Court that the order of the Tribunal has been passed on an erroneous premise in law. The Court is not bound to act on the request of the arbitral tribunal on a misconception of law. In such a situation, when the order appears to have been passed by the arbitral tribunal mechanically – even in such a situation, the Court would not only be entitled to, but would be duty bound to correct the error, if any, found in the order passed by the Tribunal. In Managing Director, Army Welfare Organisation (supra), the Supreme Court observed:*

"72. This Court cannot sit in appeal over the award of the arbitrator but can certainly interfere when the award suffers from non-application of mind or when a relevant fact is ignored or an irrelevant fact not germane for deciding the dispute is taken into consideration".

In my view, the same principle applies to orders placed before this court under Section 27 of the Act.

16*. Section 27(3) mandates that the Court "may" within its competence "and according to its rules on taking evidence", execute the request made by the tribunal by ordering that the evidence be provided directly to the tribunal. The use of the expression "may" shows that the court is not bound to act on the request in every case where a request for taking evidence is made by the tribunal. The Court "may" decline the request of the tribunal, if either it is not within the competence of the court to make an order on the request, or the request is not in accordance with the rules of the court on taking evidence.*

17*. Section 19(1) of the Act, inter alia, provides that "The Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872)". This means that the Tribunal is not bound by the rigor and strict provisions of the Code of Civil Procedure, 1908 (CPC), or the Indian Evidence Act, 1872 (Evidence Act).*

18*. Section 19(2) states that subject to the provisions of Part I, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings. In the present case, the parties have not agreed on any specific procedure to be followed by the Arbitral Tribunal in conduct of its proceedings. Section 19(3) states that "failing any agreement referred to in sub-section (2), the Arbitral Tribunal may, subject to this part, conduct the proceedings in the manner it considers appropriate" (emphasis supplied). Therefore,*

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the Arbitral Tribunal is free to devise its own procedure, subject to the condition that such procedure should conform with the provisions of Part I of the Act. The procedure that the Tribunal may devise should meet the basic tenets of an adjudicatory process, namely, that the procedure should treat parties equally, and each party should be given a full opportunity to present its case (see Section 18). The procedure to be evolved by the Tribunal cannot be such that it curtails the rights of the parties under Sections 13, 16, 17, 22, 23, 24, 25 & 26 of the Act, or any of them.

***19**. There is nothing in the Act to contra indicate the existence of jurisdiction/power in the tribunal to require the parties to produce documents, exhibits or other evidence, as the arbitral tribunal may determine. The aforesaid provision has the effect of vesting the tribunal with much greater autonomy in the matter of regulating its procedure for conduct of the arbitration proceedings, than that exercised by a civil court which is bound by the rigour of the Code of Civil Procedure (CPC) and the Indian Evidence Act. The scheme contained in Section 19 of the Act is not to denude the arbitral tribunal of its power to regulate its procedure for effective and expeditious conduct of the arbitration proceedings in a transparent and fair manner. On the contrary, the legislative intent appears to be to vest the arbitral tribunal with autonomy and flexibility in the matter of conduct of its proceedings so as to expedite the proceedings and cut the procedural wrangles witnessed in courts – which are governed by the CPC and the Evidence Act.*

***20**. The procedure that the Tribunal may adopt for conducting the proceedings need not be evolved by consensus of the parties. It is for the Tribunal to devise its own procedure, if the parties have themselves not evolved the procedure consensually under Section 19(2).*

***26**. Consequently, it is evident that the discovery, inspection and production of documents by a party, at the request of the opposite party, is a matter of procedure. It is for this reason that the same has been dealt with in Order XI Rules 12 to 15 and 21, and Order 16 of the CPC. Thus, the arbitral tribunal is not powerless to direct production of a document – considered to be relevant evidence by it, by one or the other party to the proceedings. This power is statutorily conferred upon the tribunal Section 19 of the Act. Exercise of this statutory power by the arbitral tribunal does not tantamount to assumption of "inherent power" by the arbitral tribunal – which power does not vest in an arbitral tribunal.*

***27**. It is one thing to say that the arbitral tribunal does not have the power or the jurisdiction to direct production of documents by one of the parties, and it is another thing to say that the arbitral tribunal does not have the power to enforce compliance of such a direction. If a direction issued by the arbitral tribunal directing production of documents by a party is not complied with, it appears that the arbitral*

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tribunal would be in a position to invoke Section 27 of the Act, since Section 27 of the Act deals with the aspect of taking the courts assistance for taking evidence. The aspect of production of documents is specifically dealt with in Section 27(2)(c)(ii). However, the arbitral tribunal in the present case has proceeded on an erroneous premise that it does not have the jurisdiction to direct production of documents by the respondent, even though the arbitral tribunal has found the aforesaid two documents to constitute relevant evidence, and the arbitral tribunal has straightaway invoked the provisions contained in Section 27 of the Act to seek the courts assistance for a direction to the respondent to produce the said documents.

***29**. Therefore, it is evident that the arbitral tribunal is empowered on its own, without taking resort to Section 27 of the Act, to direct, a party to produce documents, and upon the failure to comply with the tribunals direction to produce documents, the aggrieved party - who is aggrieved by the non production of documents, may either require the arbitral tribunal to draw an adverse inference against the defaulting party, or may chose to require the arbitral tribunal to enforce the direction to produce the relevant document with the assistance of the court by resort to Section 27 of the Act.*

***30**. It may be that the aggrieved party (who is aggrieved on the non production of the documents by the opposite party) may be satisfied by the arbitral tribunal drawing an adverse inference against the defaulting party, and may not wish to pursue the aspect of production of documents by the opposite/defaulting party by resort to Section 27 of the Act. It is not necessary for the arbitral tribunal in every such case to seek assistance of the court, and it would depend on the facts and circumstances of each case, whether such assistance should be sought. In any event, there would be no cause to seek assistance of the court by resort to Section 27 of the Act, without first issuing a direction to the concerned party to produce the document, and only upon the failure to comply with such a direction, the arbitral tribunal would be justified in seeking the assistance of the court under Section 27 of the Act – if so desired by the aggrieved/non defaulting party.*

***31**. I find merit in the submission advanced by the petitioner before the arbitral tribunal that if the arbitral tribunal is held not to have jurisdiction to evolve its procedure requiring production of documents (when there is no agreed procedure laid down by the parties themselves), the same would delay the conclusion of the arbitration proceedings as, in every case, the arbitral tribunal would necessarily have to move for the courts assistance under Section 27 of the Act to obtain a direction for production of the relevant documents by one of the parties, even though the party from whom documents are required to be produced may be willing to comply with such a direction if it were to be so directed by the arbitral tribunal. It would*

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also mean that even in a case where a party requiring production of documents were to be satisfied with the drawing of adverse inference against the defaulting party, the resort to Section 27 of the Act would necessarily have to be undertaken - leading to unnecessary waste of time and resources of the parties and delay in the arbitral process.

38(83) *Though, in my opinion, there is no specific provision in the Act, 1996 which specifically confers power on the Arbitrator to direct discovery, the Arbitrator has absolute power and flexibility by virtue of Section 19 of Act, 1996 to conduct the proceedings in the manner it considers appropriate. I may mention that under the Evidence Act, 1872 and Code of Civil Procedure, 1908. Section 27 of Act, 1996, in my view, only deals with third party discovery and not with regard to discovery of parties before the arbitral tribunal. This inherent power of discovery, in my view, is found in Section 19(3) of Act, 1996, which reads as under:*

19. Determination of rules of procedure.–

xxxx xxxx xxxx

(3) Failing any agreement referred to in Sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate."

40*. In case the respondent were not to comply with the said direction within the time granted, and the petitioner were to seek enforcement of the said direction by resort to Section 27 of the Act, the arbitral tribunal would have been justified in approaching the court. However, the approach by the arbitral tribunal to this court to seek assistance for production of documents is without any cause, founded upon an erroneous premise that it does not have jurisdiction to itself direct production of the documents, and, is also premature, since it is possible that the respondent may produce the documents when so directed by the tribunal – to avoid the drawing of an adverse inference by the arbitral tribunal against the respondent, or the petitioner may be satisfied by the drawing of an adverse inference against the respondent on account of non production of the said documents, and may not want to pursue its endeavour to seek production of the documents by resort to Section 27 of the Act.*

*[**41**.] Mr. Chandhiok, learned senior counsel appearing for the respondents has sought to assail the order passed by the arbitral tribunal insofar as the arbitral tribunal has sought the assistance of the court for production of the reply of the respondent, submitted to the Vigilance Department, about the queries raised by the department in respect of payment. As noticed herein above, I am not hearing an appeal against the order passed by the arbitral tribunal on 20.07.2013, as the said order is not appealable. Insofar as the order passed by the arbitral tribunal on the aspect of relevance of the documents is concerned, a perusal of the same - on the face of it, does not call for interference in these proceedings under Section 27 of the*

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> *Act. I, therefore, do not consider it necessary to deal with the submission of Mr. Chandhiok in this regard.*
>
> ***42**. It shall be open to the respondent - if it has the courage of its conviction, not to produce the said documents. However, it shall do so entirely at its own risk and peril, and the respondent shall take the consequence of its failure to produce the relevant documents. Reference may be made to the observations of the Andhra Pradesh High Court in Rajesh Bhatia & Ors. v. G. Parimala & Anr., IV (2005) BC 215=2006 (3) ALT 129, wherein the court observed:*
>
> *"**42**. Having regard to the view taken by me hereinabove, the individual parties cannot be compelled to produce the documents if they refuse to produce the documents pursuant to the notice served upon him by the adversary or an order as a matter of that passed by the Court so as to ascertain the truth in accordance with the provisions contained in Section 165 of the Act for non-compliance of such a direction to produce the documents the penal consequences will not follow as in the case of discovery of documents as per the provisions contained in Order 11, Rule 21 of the Code. However, certainly the Court is entitled to draw the adverse inference**".*

27. The Hon'ble High Court of Delhi has thus proceeded on the principle that the autonomy and independence of the Arbitral Tribunal ought not to be curtailed and, in case it decides to summon a witness, the same shall remain within the ambit of Section 19 of the Act. However, at the same time, such direction would not be enforceable except through the procedure envisaged under Section 27 of the Act, in case of non-compliance.

28. The same judgment was also reaffirmed by the Hon'ble Division Bench of the Delhi High Court in ***Bharat Heavy Electricals Ltd. v. Silor Associates S.A., reported as 2014 Legal Eagle (DEL) 1208***.

29. Learned counsel appearing for the Union Territory, Mr. Malik, has placed reliance upon the judgment rendered by the Hon'ble High Court of ***Punjab and Haryana at Chandigarh in BJ-Techno HSA (JV) v. National Hydroelectric Power Corporation Limited, reported as 2019 SCC OnLine P&H 2118***. Learned counsel has invited the attention of this Court to paragraphs 14, 16 and 19 of the said judgment, which are reproduced hereinbelow:—

> ***14.** In "National Insurance Company Limited v. S.A. Enterprises" Review Petition (L) No. 51 of 2015 in Arbitration Petition No. 1544 of 2015 decided on 16.10.2015, similarly the Bombay High Court had held—*

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> ***"40.*** *In my view, the arbitral tribunal cannot issue a witness summons itself or cannot enforce its own order of producing certain documents or cannot force a party or a third party to lead evidence or to produce documents. The arbitral tribunal or a party to the proceedings with the approval of the arbitral tribunal may apply to the Court for assistance in taking evidence. In my view, at this stage, this Court cannot go into the validity and correctness of the order passed by the learned arbitrator granting permission to the respondent herein for seeking assistance of this Court in taking evidence under Section 27 of the Arbitration Act. It is for the arbitrator to decide as to whether particular documents or presence of a particular witness would be necessary for the proper adjudication of the dispute between the parties or not, if any such application is made by the parties to the arbitral proceedings. In these proceedings under Section 27 of the Arbitration Act, this Court cannot decide whether production of such documents or presence of such witness was warranted or not."*

16. *Similarly, in "Montana Developers Pvt. Ltd. Mumbai v. Aditya Developers, Mumbai", Arbitration Petition (Lodging) No. 680 of 2016 decided on 22.6.2016, the Bombay High Court had held—*

> ***"16.*** *I am thus inclined to accept the submission of Mr. Tulzapurkar, the learned senior counsel for the petitioner that the powers under section 27 of the Arbitration Act are not adjudicatory powers. In my view, the said provision provides a procedure for providing assistance to a party in whose favour the learned arbitrator has opined that the production of documents or witness was warranted in the facts of his case. Under section 19 of the Arbitration Act, it is clearly provided that the learned arbitrator shall not be bound by the Code of Civil Procedure, 1908 or Evidence Act, 1872. In my view, the arbitral tribunal is thus not empowered to issue any witness summons itself or to compel a party to produce any documents under the provisions of the Arbitration Act. If the learned arbitrator is satisfied on the application made by any of the party that production of witness or documents which is not being produced inspite of the attempts made by a party, the arbitral tribunal can grant permission to such a party to take the assistance of this Court under section 27 of the Arbitration Act. In my view, merely because a party has filed the arbitration proceedings in view of the agreement between the parties, he cannot be put to disadvantage in view of the powers of summoning a witness not having been provided to the arbitrator under the provisions of the Arbitration Act.*

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> ***19.*** *I am not inclined to accept the submission of Mr. Sancheti, the learned senior counsel for the respondents that in the proceedings under section 27 of the Arbitration Act, the Court can decide the merits of the order passed by the learned arbitrator. In my view, Mr. Tulzapurkar, the learned senior counsel for the petitioner is right that under section 27 of the Arbitration Act, a procedure is prescribed for taking assistance of this Court for issuance of witness summons in terms of the order passed by the learned arbitrator and the proceedings are not adjudicatory proceedings."*

30. The proposition thus gets narrowed down to the extent that Section 27 is a power whereby the Arbitrator can seek the assistance of the Court for taking evidence, but the word used is "may" and, thus, while such assistance from the Court is a procedure envisaged under the Act of 1996, there shall also be an independent power of procedure in the given circumstances under Section 19 of the Act of 1996. The legislative intention seems to be that, while giving all the powers to the parties and the Arbitrator under Section 19 to decide the issues of admissibility, relevance, materiality and weight of evidence, the power has been further strengthened so that, in case there is non-compliance with the directions issued, teeth have been given to the power under Section 27, whereby the assistance of the Court may be invoked by the Arbitrator for continuing the proceedings.

31. Although the judgments cited of the Hon'ble High Court of Punjab and Haryana at Chandigarh, and the judgments cited within those judgments, have taken a very strict interpretation that Section 27 is the only remedy to compel the summoning of evidence, by invoking Section 27, at the same time, the Hon'ble High Court of Delhi has put the analogy in a broader perspective, whereby the independence of the Arbitrator would continue in terms of Section 19, under which he can determine the aspects of admissibility, relevance, materiality and weight of evidence and also take the help of the Court under Section 27, if required.

32. This Court is of the considered opinion that Section 19 confers independent powers upon the Arbitral Tribunal to conduct its proceedings in the manner it considers appropriate and also gives it the power to determine the admissibility, relevance, materiality and weight of evidence. The legislative intention is very clear that, on all these aspects, the Arbitrator shall have independent power; however, the moment Section 27 comes into operation, it envisages that there may be circumstances where the compelling part of the

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process could be undertaken only under Section 27, by taking recourse to making an appropriate application before the Court which is defined in the Act of 1996.

33. Thus, this Court, in its considered opinion, finds that, in order to give effect to the legislative intent underlying the Act of 1996, to confer full-fledged powers upon the Arbitrator to continue the proceedings while, at the same time, restraining the Arbitrator from converting such proceedings into judicial proceedings by not conferring upon it the power to compel calling of witness, it would be in consonance with the legislative scheme of the Act for the Arbitrator to proceed in accordance with the procedure in vogue. Thus, where the summoning of witnesses, which is the bone of contention in the present matter, requires compulsion, the Arbitrator may seek the assistance of the Court by invoking Section 27 of the Act of 1996.

34. Accordingly, while answering Question No. 1, this Court is of the considered opinion that Section 19 has an independent ambit and the Arbitrator, where the parties have not agreed upon the procedure to be followed, may conduct the proceedings in the manner it considers appropriate, which includes the power to determine the admissibility, relevance, materiality and weight of evidence and, consequently, to issue summons or directions for the calling of any of the witnesses.

35. Regarding Question No. 2, whether such witness/summons can be compelled to appear pursuant to the summons issued by the Arbitrator, the answer is in the negative. The power to compel attendance has been dealt with under Section 27 of the Act, and the option has been given to the Arbitrator that he may resort to applying to the Court for assistance in taking evidence.

36. Thus, this Court is of the considered opinion that the Arbitrator shall be required to seek assistance while taking evidence in case the summons issued by him are required to be compelled to depose.

37. Since this Court has arrived at the considered opinion that the Arbitrator can issue summons for securing the voluntary attendance of a witness, but the parties cannot be compelled, we direct and clarify that both these orders shall mean that, if the witness wishes to appear voluntarily in terms of the summons, it shall be open for him to do so, and in case he does not appear, then the Arbitrator would not be in a position to compel him to appear by adopting Section 27 procedure. Thus, it shall be open for the Arbitrator to

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take recourse to Section 27 of the Act of 1996 by seeking the assistance of the competent Court.

38. Having answered the aforesaid questions and clarified the legal position governing the impugned orders, the controversy arising out of the writ petition stands resolved to the extent indicated above.

39. Now, coming to CM No. 8178/2025, seeking extension of the mandate of the learned Arbitrator, it is observed by this Court that, as per the directions of the Hon'ble Apex Court passed in ***C. Velusamy v. K. Indhera, Civil Appeal arising out of SLP (C) No. 6551 of 2025, reported as 2026 INSC 112***, learned counsel for the Union Territory has drawn the attention of this Court to paragraph 13, which reads as follows:-

> ***13***. *Section 29A, as explained in recent decisions of this Court in Rohan Builders (supra), Lancor Holdings (supra) and Jagdeep Chowgule v. Sheela Chowgule can be formulated as under:*
>
> *(I) Sub-section (1) of Section 29A mandates that the award shall be made within 12 months of the completion of pleadings before the Arbitral Tribunal . While sub-section (2) incentivises expeditious making of the Award, proviso to sub-section (4) and sub-section (8) authorises the Court to impose penalty for delay in making the award.*
>
> *(II) Sub-section (3) enables parties, by consent, to extend the period of 12 months for making the award by a further period not exceeding 6 months.*
>
> *(III) If the award is not made within the stipulated period of 12 months or the extended period of 6 months, the mandate of the arbitrator(s) shall terminate.*
>
> *(IV) This termination is subject to the power of the Court to extend the period*
>
> *(V) The 'Court' under Section 29A shall be the Civil Court of ordinary original jurisdiction in a district and includes the High Court in exercise of its original civil jurisdiction under Section 2(1)(e), and shall not be the High Court or the Supreme Court under Section 11(6) of the Act. Section 42 of the Act relating to jurisdiction for applications will also not apply to Section 11 of the Act .*

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> *(VI) There is no statutory prescribed time limit for the Court to exercise the power under Section 29A(4) for extending the period, except for its own discretion. The Court can exercise the power before or after the expiry of the period under sub-sections 29A(1) or (3) . Further, there is no prescription of an outer limit for extending the time for the conclusion of arbitral proceedings. Given this power, the Court will exercise it with circumspection, balancing the remedy with the rights of other stakeholders.*
>
> *(VII) The power of the Court to extend the time under sub-section (4) may be exercised on an application by any of the parties. Once such an application for extension of time is pending, the mandate of the arbitrator shall continue till the disposal of such application under sub-section (9). The Court shall endeavour to dispose of such an application within 60 days .*
>
> *(VIII) Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India.*
>
> *(IX) Under Section 29A(6), while exercising the power of extension, it shall be open to the Court to substitute one or all the arbitrators. This is a discretionary power that the Court would exercise in the facts and circumstances of the case*

40. He submits that, for the purpose of an application for extension of the time of the Arbitrator, the powers under Section 11(6) cannot be exercised, but the powers under Section 29A have to be exercised, and, thus, only the Court of the Commercial Division or the Original Court, as defined under Section 2(1)(e), can examine the matter for extension of time. The law laid down by the Hon'ble Apex Court under Section 29A(2) envisages that the parties, by consent, can extend the period by 12 months for making the award and, further, for a period not exceeding six months. In the case before this Court, both the parties, namely, the Union Territory and Kuchay Constructions are in agreement in consenting to extend the period by 12 months. Ordinarily, this Court would not have liked to exercise such power of extension, as the power under Section 29A should have been exercised by the competent Court; however, since the writ petition itself was the cause of delay in

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adjudication and the consequent stoppage of the proceedings, and since the precedent laid down by the Hon'ble Apex Court, as well as the legislation, makes it clear that, by consent of the parties, the time can be extended, in the limited and peculiar factual matrix of the case, the time is extended by 12 months, with a word of caution to the learned Arbitrator to proceed strictly in accordance with law.

41. The writ petition, along with all connected CMPs, including CM No. 8178/2025, stands disposed of in the above terms.

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

SRINAGAR
30.10.2026
Shameem H.

Whether approved for reporting? : Yes

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