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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3934 OF 2024

Sarita Matadin Kejriwal W/o Late Matadin S Kejri-
wal And Ors.

...Petitioners

Versus

Meena Devi Narayan Goenka and Anr.

...Respondents

Ms. Ankita Singhania a/w Adv. Burzin Somandy, Adv. Nikita H.
Joshi i/b Adv. Tejaswita Somandy, for the Petitioners.

Mr. Aseem Naphade a/w Adv. Manasi C. Pandi i/b Esha Singh
Bhadoria, for the Respondent No.1.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 27, 2026

ORDER :

1. The Affidavit of Service from the Petitioner seeking to demonstrate service of the order dated January 23, 2026 on Respondent No.2, the Hindustan Chamber of Commerce ("**Chamber**"), is taken on record. The Respondent No. 1, who had received the letter from the Petitioner addressed to the Respondent No. 2 communicating the said order, has not independently corresponded with the Tribunal, but confirms that the Petitioner has indeed communicated to Respondent No.2 the contents of the order dated January 23, 2026.

2. The matter in hand involves assessing which of the two versions is correct – the version propounded by the Learned Advocate for the Petitioner, who claims to have appeared before a sole individual, namely, the Secretary of the Chamber, as opposed to the version of the Learned Arbitral Tribunal, which, as seen from the Impugned Order and a Roznama said to have been prepared on March 28, 2023 (brought on record in the Affidavit-in-Reply), indicating that the three Arbitrators had conducted the hearing and had issued the directions contained in the said Roznama.

3. It is in this context that Respondent No. 2 was asked to take a specific position on oath and bring on record the records and proceedings before the Arbitral Tribunal to enable this Court to take a view in the matter. Sitting in the writ jurisdiction, this Court does not intend to conduct a trial as to which version is right. But the conscience of this Court needs to be assuaged and satisfied that nothing untoward is being conducted in the course of the arbitration. Therefore, the filing of such an Affidavit by Respondent No.2 was sought. Respondent No. 2 is given one more chance to file the same, which shall be done no later than May 5, 2026.

4. At this stage of dictating this Order, the Learned Advocates for the parties have reached a consensus to put an end to this controversy and jointly

submit that they are willing to proceed to arbitration before a Sole Arbitrator appointed by this Court.

5. The suggestion is acceptable and taking on board the consent of the parties, the Petition is disposed of without getting into what transpired at the hearing. In any other appropriate case at a later stage, should a similar pattern of controversy arise in respect of the same institution, this facet can be considered.

6. Even while disposing of this Petition to a newly constituted Arbitral Tribunal in terms of this Order by consent of the parties, it is clarified that in exercise of the extraordinary jurisdiction of this Court invoked by the Petitioner, the issue of whether the Petitioner is a party to the arbitration agreement cannot be raised yet again before the Learned Arbitral Tribunal appointed here. This is because the core ground on which the Section 16 Application had been filed was that the Petitioner, as the wife of the deceased party to the arbitration agreement, was not a party to the arbitration agreement.

7. In terms of Section 40 of the Arbitration and Conciliation Act, 1996, the arbitration agreement does not stand discharged and can be enforced against legal heirs of the deceased signatory-party to the arbitration agreement. Section 40 reads thus:

“40. Arbitration agreement not to be discharged by death of party thereto. —

(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.”

[Emphasis Supplied]

8. In view of this position, the Section 16 Application which was the subject matter of controversy and was agitated before the Arbitral Tribunal of the Chamber cannot be raked up again. Needless to say, should any other facet of the dispute pursued fall outside the scope of the arbitration agreement that binds the Petitioner, such question of fact may separately give rise to a different Section 16 Application. What is made clear is that the pursuit of an objection under Section 16 simply on the ground of the Petitioner not being a signatory, in respect of a dispute squarely covered by the arbitration agreement, cannot be raised afresh.

9. With the aforesaid clarification, the Writ Petition is **disposed of**, taking the consent of the parties to proceed to arbitration before a Sole Arbitrator who is appointed in the following terms :-

A] Ms. Karishma Rao, a Learned Advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:- 11C, 1st Floor, Examiner Press
Building,
Dalal Street, Fort, Mumbai -
400001.

Email ID: karishma01@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of upload of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator

on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

10. The Writ Petition is finally ***disposed of*** in the aforesaid terms. No costs.

11. 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.]