

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 513 OF 2015

Tata Motors Limited

...Petitioner

Versus

Praman Motors Limited & Ors.

...Respondents

Mr. Abhishek Khare & Mr. Kunal Gaikwad, i/b Khare Legal Chamber,
for the Petitioner.

Mr. Shashank Chandrakant Mangle, for the Respondents.

CORAM : S.C. GUPTE, J.

DATE : 12th February 2016

P.C. :

1 . This Petition seeks recall of a witness with leave of the Arbitrator. In the course of their evidence, Respondents No. 1 and 2 had tendered one Himanshu Vijayvargiya, Director of Citi Bank, as their witness. The witness was examined by the learned Advocate for Respondents No. 1 and 2. In answer to several questions in his examination-in-chief, the witness indicated a need to check particulars and give answers after checking the record. So also, in his cross-examination by the learned Advocate for the Claimant, who is

the Petitioner before this Court in the Arbitration Petition, the witness replied (in answer to Questions No. 1 and 5) that he would need to check and come back, indicating thereby that the witness would have to check the records of Citi Bank and then answer the questions. This Petition is on the footing that the witness must be recalled for further cross-examination after giving him opportunity to check the relevant records and then submit answers as indicated by him in his evidence referred to above. No doubt, in the facts of the case recounted above, the cross examiner ought not to have allowed the witness to be discharged, and insisted on answers being given by the witness after checking the record, as suggested by him, but the evidence sought to be led is clearly relevant from the point of view of the controversy in the arbitration reference and in the premises, the recall of the witness for elucidating answers to the unanswered questions is in the interest of justice. The Respondents can, if at all, be very well compensated for the inconvenience caused to them. On this footing, learned Arbitrator has granted leave to the Petitioner to apply to this Court for recall of the witness.

2. I am of the view that in the interest of justice, the witness, namely, Himanshu Vijayvargiya, Director of Citi Bank be

recalled for further cross-examination.

3. Since this recall Petition has been occasioned as a result of a lapse on the part of the Petitioner, I would have ordinarily awarded costs to be paid to the Respondents. Considering the fact, however, that the Respondents are not bearing any costs of the arbitration reference as of now and it is the Petitioner, who is paying the share of the Respondents towards the costs under Section 38 of the Arbitration and Conciliation Act, 1996, I leave the question of costs occasioned due to recall to be decided by the learned Arbitrator as part of his award under Section 31 of the Arbitration and Conciliation Act, 1996.

4. Accordingly, I direct a witness summons to be issued to Mr. Himanshu Vijayvargiya for further cross-examination before the Sole Arbitrator. The Petitioner's Advocate shall intimate the office about the returnable date of the witness summons, after confirming the date with the learned Arbitrator. The Respondents also shall co-operate in the matter.

5. The Petition is disposed of accordingly.

[S.C. GUPTE, J.]