

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION (LODG.) NO. 663 OF 2017

F.A. Enterprises

....Petitioner

Vs.

The State of Maharashtra & Ors.

....Respondents

Ms. Shilpa Kapil for petitioner.

Mr.H.B.Takke, AGP for respondent no.1.

Mr.Avinash B. Avhad i/b Dinesh B. Khaire for respondent no.2 (KIDC).

Mr.G.S. Hegde a/w. Ms.P.M.Bhansali for respondent no.3 (CIDCO).

CORAM : K.R.SHRIRAM, J.

DATE : 21ST AUGUST, 2017

P.C.:

1 This petition is filed under Section 27 of the Arbitration and Conciliation Act, 1996. Petitioner is seeking issuance of witness summons to an employee of respondent no.2. For the moment, I am not going into the issue as to whether petitioner can seek witness summons to be issued to an employee of the opposing party. At the same time, under Section 27, there are various pre-requisites mentioned before this application can be made.

Sub-section 1 of Section 27 reads as under :

27. Court assistance in taking evidence :-

(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

2 Ms.Kapil appearing for petitioner states that the letter dated 9th August 2017 addressed by the Presiding Arbitrator to the other four Arbitrators is the approval.

3 In my view, it is not a consent or approval of the Arbitral Tribunal. In the letter, it is recorded by the Presiding Arbitrator as :

“ On 27th July 2017 an application u/s 27 of the act is filed requesting permission to approach court for direction to summon Shr.R.C.Rihe as witness of the Claimant. No prejudice can be caused to any party as the relief will be granted by the High Court. I therefore feel it just and proper to allow this application and permit the claimant to approach the High Court for necessary directions regarding summoning of witness Shr.R.C.Rithe. The meeting fixed for tomorrow also cannot be held as the cross-examination of the witness may not be complete within that time. There are certain other compelling circumstances due to which it will be very difficult to hold tomorrow's meeting, therefore the meeting to be held on 10th August is hereby cancelled.”

There is nothing on record to show that the other Arbitrators have agreed with the opinion of the Presiding Arbitrator.

4 Petition, therefore, dismissed with liberty to take out appropriate proceedings if all the Arbitrators approve this application of petitioner which will be considered on its merits as and when filed.

Notwithstanding dismissal of petition, petitioner to remove all office objections and get the petition numbered.

(K.R. SHRIRAM, J.)