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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2783 OF 2016
IN
ARBITRATION PETITION NO. 268 OF 2012**

Ahluwalia Contracts India Ltd ...Petitioners
Versus
M/s. Bellamy Construction & Infrastructure Pvt ...Respondents
Ltd

Dr GR Sharma, with Mr DP Singh & Mr Anil K Singh, for the the
Applicants/Petitioners.
Mr Karl Shroff, with Mr Mohit Arora & Ms Nisha Kaba, i/b M/s.
RM Partners, for the Respondents.

CORAM: G.S. PATEL, J
DATED: 19th January 2017

PC:-

1. In my view, this Notice of Motion is thoroughly misconceived. It is ostensibly brought under Section 27 of the Arbitration & Conciliation Act 1996.
2. The disputes have been referred to the sole arbitration of Hon'ble Mr Justice DK Deshmukh, former Judge of this Court. The Applicant is the Claimant before the learned Arbitrator. He has not only led its evidence but examined one witness and closed his

case in arbitration. The stage, I am told, is that the Respondent's first witness is under cross-examination.

3. It is at this stage that this Notice of Motion was filed, and at the time of filing, without the learned Arbitrator's permission, for issuance of summonses to the witnesses to produce documents relating to the project in question.

4. From a perusal of the Affidavit in Support of the Notice of Motion these prospective witnesses appear to be not only from the local Authorities but also the Respondents' own employees. Taking the last issue first, it is well-settled that this practice of calling the other side's employees or witnesses is one that has been deprecated for over a century.

5. This leaves the question of the Claimant now bringing in additional witnesses and effectively reopening the case that it has already closed.

6. It is strenuously argued before me that all that is sought for confirmation of some signatures. This is not enough. This ought to have been done before the Claimant closed its case. If the documents said to be required to be verified are of the kind that they are available with the local Authorities, then summonses could and should have been got issued under Section 27 well before the Claimant closed its case and well before it began cross-examining the Respondent's witness. The Claimant has admittedly obtained these documents under Right to Information Act 2005. There is

little point in saying that these documents were obtained after the Claimant closed its case. The very nature of the documents (i.e., any permissions and sanctions from the local Authorities) was such that it was obvious that they could have been summoned at any time from the local authority. Whether or not the Claimant had copies of these under Right to Information Act 2005 is, therefore, wholly irrelevant.

7. Section 27 of the Arbitration & Conciliation Act 1996 is meant to assist the Arbitrator and it is under this provision that Courts issue witness summonses. It is this process that is now being invoked before me.

8. I am shown copies of the minutes of meeting held before the learned Arbitrator on 19th October 2016, well after this application was filed. The Arbitrator said that the Claimant was at liberty to make this application. He expressed no opinion himself or whether he thought the presence of these witnesses was at all necessary. He did not opine that he needed any sort of clarification. This puts the present application completely out side the purview of Order 18 Rule 17 of the Code of Civil Procedure 1908.

9. The reliance placed by Dr Sharma on the decision of RD Dhanuka J in *Montana Developers Pvt Ltd v Aditya Developers & Ors*¹ is wholly misplaced for the simple reason that in the matter before Dhanuka J, the Arbitral Panel had itself felt that it required summonses to be issued and the production of certain evidence.

1 Arbitration Petition (L) No. 680 of 2016, order dated 22nd June 2016.

Montana Developers was decided in that context. There is no such view expressed by the Arbitrator in the present case.

10. There is no question of granting any relief in this Notice of Motion. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)