

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

ARBITRATION PETITION (L) NO. 785 OF 2017

F.A. Enterprises

.. Petitioner

v/s.

The State of Maharashtra & Ors.

.. Respondents

Ms. Shilpa Kapil a/w C. Kapil for the petitioner

Mr. A.B. Avhad a/w D.B. Khaire for respondent no.2

Mr. G.S. Hegde for respondent no.3

Mr. Amar Mishra, AGP for respondent no.1

CORAM : M.S. SANKLECHA, J.

DATED : 5th OCTOBER, 2017

P.C.

1. This petition is under Section 27 of the Arbitration and Conciliation Act, 1996 (the Act), seeks assistance of this Court to issue a witness summons to one Mr. Rajesh C. Rithe, having his address at Kubera Park, Sukhwani Ellitte, Flat No.10, 5th Floor, Kondhawa Road, Lullanagar, Pune (said witness). This to ensure the attendance of the said witness to give evidence before the Arbitral Tribunal adjudicating a dispute between the parties.

2. The petitioner had sought the attendance of the said witness

before the Arbitral Tribunal to lead evidence. However, the said witness refused to attend the proceedings before the Arbitral Tribunal. Therefore, the petitioner had applied to the Arbitral Tribunal for permission to seek assistance of this Court to issue summons to the said witness. By an order dated 29th August, 2017 the Arbitral Tribunal allowed the application of the petitioner to approach this Court for issuing necessary witness summons to the said witness to appear before it. Thus, this application.

3. Mr. Hegde and Mr. Avhad, learned Counsel appearing for the respondent nos. 2 and 3 seek to challenge the permission granted by the Arbitral Tribunal in its order dated 29th August, 2017 to the petitioners to approach this Court for issuing witness summons to the said witness. This on the ground that the said witness is an employee of respondent no.2. Therefore, in law he could not be called as a witness for and on behalf of the petitioner, who is the claimant before the Arbitral Tribunal while the respondent nos. 2 and 3 herein are respondents therein.

4. The grievance urged by the respondent nos. 2 and 3 before me

is not subject to my examination while dealing with an application under Section 27 of the Act as held by this Court in ***Montana Developers Pvt. Ltd., Mumbai Vs. Aditya Developers, Mumbai & Ors. 2016(6) Mh.L.J. 660.*** In the above case, the Court emphasized the bar to a Court from interfering in arbitral proceedings under Section 5 of the Act, unless specifically provided for in the Act. It held that there is no provision in the Act, which would entitle the respondents to challenge the Arbitral Tribunal granting permission to take the assistance of the Court for issuing witness summons. Thus, the objection of the respondent nos. 2 and 3 are rejected.

5. However, it is made clear that the rejection of the objection raised by the respondents in this application would not bar them from raising the same at an appropriate stage, if permitted by law. It is made clear that while dealing with this petition, I have had no occasion to examine the above issue.

6. In the above view, the petition is allowed in terms of prayer clause (b).

7. The petitioner to inform the Registry at the earliest the date and venue as fixed by the Arbitral Tribunal for the said witness to attend. This would enable the Registry to issue necessary summons in compliance with the order of this Court.

(M.S. SANKLECHA, J.)