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

ARBITRATION PETITION (L) NO. 1479 OF 2018

Sachin Kelkar

...Petitioner.

vs

The Sole Arbitrator & Anr.

...Respondents

.....

Mr Anita Castelino a/w Pritam Joshi for the Petitioner.

Mr Vikhil Dhoka a/w Mr Pramod Pandey I/b Solicis Lex for
Respondent No.2.

.....

**CORAM : B.P.COLABAWALLA, J.
DECEMBER 19, 2018.**

P.C. :

This Arbitration Petition has been filed seeking to challenge the order passed by the Arbitral Tribunal dated 29th October, 2018. By the impugned order the Arbitral Tribunal rejected the application of the Petitioner for taking the counterclaim on record.

2 Initially, the Arbitral Tribunal had passed an order on 3rd May, 2018 stating that the counterclaim of the Petitioner shall not be taken on record on the ground that though the Petitioner had sought time to file the counterclaim, the same was not tendered before the Arbitral Tribunal.

3 To set aside this order, the Petitioner filed an application dated 11th October, 2018 once again asking Arbitral Tribunal to take its counterclaim on record. It is while deciding this application that the impugned order has been passed and the Arbitral Tribunal, for the reasons stated in the impugned order, has refused to take the counterclaim on record. The Arbitral Tribunal had passed a very detailed order setting out how the Petitioner has engaged in dilatory tactics to somehow or the other delay the arbitral proceedings. Moreover the Arbitral Tribunal has also noted that the Petitioner has not deposited the fees of the Arbitral Tribunal for the hearings held before it either with reference to the claim or the counterclaim. The Arbitral Tribunal then referred to Section 38 of the Arbitration and Conciliation Act, 1966 (“the Act”) and opined that it was fully empowered to terminate the proceedings upon failure of a party to deposit the fees of the Arbitral Tribunal. On this count also the Arbitral Tribunal was of the opinion that the counterclaim could not be permitted to be filed.

4 I fail to see how this order can be challenged under Section 37 of the Act. It is not as if every order of the Arbitral Tribunal can be challenged before the Court. The only orders that are appealable are mentioned in Section 37 of the Act and only those

orders can be challenged. The only other remedy is to challenge an award under Section 34 of the Act. The impugned order passed by the Tribunal dated 29th October, 2018 is neither an appealable order under Section 37 of the Act and nor is it interim award that can be challenged under Section 34 of the Act. In these circumstances, the Arbitration Petition itself is not maintainable and is accordingly dismissed. No order as to costs.

5 It is made clear that I have not opined on the merits or demerits of the conduct of the Petitioner and which find place in the impugned order.

(B.P.COLABAWALLA, J.)