

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

**CONTEMPT PETITION (L) NO.5 OF 2019
IN
ARBITRATION PETITION NO.1402 OF 2014**

The Comedy Store Limited

....Petitioner

vs

Horsehoe Entertainment & Hospitality
Pvt. Ltd. And 2 Ors.

...Respondents

.....

Mr. Mayur Khandeparkar, i/b. M/s. Khaitan Legal Associates, for the
Petitioner.

Mr. Akshay Vani, i/b. MLS Vani and Associates, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: 6 MARCH 2019

P.C.:

. Heard learned Counsel for the parties. This contempt petition alleges breach or disobedience of an order passed by this Court on 22 February 2017 in the arbitration petition herein. The arbitration petition was under Section 9 of the Arbitration and Conciliation Act, 1996. At the hearing of the petition, the parties agreed to refer their disputes to the sole arbitration of an arbitrator. The order passed by this Court records an undertaking of the parties that they each will bear and pay 50% of all arbitration costs, including arbitration fees of the learned sole arbitrator, from that point onwards. (There was a dispute about fees paid by the Petitioner to a previous arbitral tribunal.) It is basically the grievance of the Petitioner herein that the Respondents-contemnors, despite having agreed and undertaken to bear and pay 50% of

arbitration costs, including arbitrator's fees, are not honouring their commitment. It is submitted that a large portion of the fees payable by the Respondents to the sole arbitrator, i.e. a sum of about Rs.35 lakhs, is to be paid by the Respondents.

2. The Respondents-contemnors resist the petition by filing a reply. It is pointed out in the reply that the preliminary order of the learned arbitrator, determining a fee structure, had fixed fees of Rs.5 lakhs by each of the parties as reading fees of the two references and Rs.1 lakh per party as arbitration fees per sitting. It is submitted that there have been 32 sittings so far and, thus, the total amount of reading fees and sitting fees works out to Rs.74 lakhs (Rs.10 lakhs as reading fees, i.e. Rs.5 lakhs each for the two references, and Rs.2 lakhs each per sitting for the hearings). Learned Counsel submits that the Respondents have so far deposited fees in the sum of Rs.30 lakhs to the learned arbitrator, leaving a sum of Rs.7 lakhs as due and payable by the Respondents to the learned arbitrator. Learned Counsel submits that his clients are prepared to pay these fees. Learned Counsel submits that the fees shall be paid within two weeks from today. The statement is accepted.

3. Apropos of the arbitrator's demand to deposit further amounts towards reading fees and fees for making of an award, made around the time the hearings in the reference were drawing to a close and the reference was to be closed for an award, learned Counsel for the Respondents submits that it has worked a grave prejudice to the Respondents in as much as further reading fees and fees for rendering of

award, working out to a whopping sum of Rs. 40 lakhs to be shared between the parties, is an exorbitantly high figure and the Respondents had never agreed to pay such high fees; they were not even informed when the fee structure was fixed or at any time earlier that such fees would be charged for further reading and making of an award. Learned Counsel submits that the Respondents have a legitimate grievance in this behalf.

4. From the facts narrated above, it does transpire that the Respondents have a legitimate grievance about fees charged by learned arbitrator. In the face of such grievance, invocation of contempt jurisdiction of this Court is not an appropriate remedy. Contempt jurisdiction, which is anyway exercised by courts sparingly, is reserved for a contumacious defiance of the orders passed by courts, such defiance, if allowed to be gotten away with impunity, being apt to shock the confidence of the society in the efficacy of judicial administration. On the facts narrated above, this Court is of the view that the charge of such contumacious defiance certainly cannot be laid at the doors of the Respondents for their having refused to pay the arbitrator's fees, which anyway have been ordered almost at the fag end of the arbitration reference, and which, from the record, it does appear, were not communicated earlier to the Respondents.

5. Accordingly, this is not a fit case for exercise of contempt jurisdiction of this Court. The contempt petition is dismissed.

(S.C. GUPTE, J.)