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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1308 OF 2019**

Dinesh D Varshney

...Petitioner

Versus

Majeithia & Co & Ors

...Respondents

WITH

COMM ARBITRATION PETITION NO. 1038 OF 2018

Mr Anand Mishra, i/b AM Saraogi, for the Petitioner.

Mr Jay Kamlesh Majeithia, Partner of Respondent firm present.

CORAM: G.S. PATEL, J.

DATED: 3rd December 2019

PC:-

1. This petition is ostensibly under Sections 27 and 29 of the Arbitration and Conciliation Act 1996. By an order dated 30th April 2019 in Commercial Arbitration Petition (L) No. 1038 of 2018, GS Kulkarni J appointed an advocate of this Court, whose name I will not reproduce in this order for reasons that will shortly become apparent, as a sole arbitrator. The order, I notice, did not make specific mention that the Bombay High Court (Fee payable to Arbitrators) Rules 2018 would apply. But that makes little difference. For, at the first meeting on 20th May 2019, the learned sole arbitrator passed directions and fixed a schedule of fees which,

so far as I can tell, appear to have been in accordance with the schedule prescribed by this High Court under its Rules. Mr Mishra for the petitioners says that this is in fact correct.

2. What followed thereafter is most distressing. The claimant, an individual, applied to the learned sole arbitrator for a significant reduction in fees saying that the claimant was a senior citizen and could not afford such fees. The learned sole arbitrator rejected this request.

3. That was not the only issue. It seems that on 23rd July 2019, the respondent's partner, one Kamlesh Shivaji Majethia , wrote to the arbitrator. The contents of that communication are indescribably offensive. They contain allegations against the arbitrator. The wording is most inappropriate. Parties must understand that even if an arbitration is a private forum, and an arbitrator is a creature of contract, they are expected to conduct themselves before the arbitral tribunal exactly as they must do in court. There is no difference. The arbitral tribunal does not act at the direction of either or even both parties. They may have appointed the tribunal by consent, or had the tribunal appointed by court, but that gives the parties no special rights vis-à-vis the tribunal. In any case, there is simply no excuse for a lack of civility.

4. The arbitrator was compelled to respond to this communication by his letter of 24th July 2019. He noted too the offensive conduct of Kamlesh Majethia whenever he did appear before the arbitrator.

5. It seems that in the meantime the claimant asked the arbitrator's staff not to deposit immediately the cheques he had issued. On 6th November 2019, the claimant made an application for an adjournment through his advocate producing some illegible documents supposedly referring to a hospitalisation or an illness. The learned sole arbitrator noted that his fees were still unpaid and that the documents showed nothing and nothing could be made out from them. Yet he granted the claimant a final opportunity until Saturday, 9th November 2019 to comply and in default said that the proceedings would be terminated and the ad-interim stay would be vacated.

6. I am told that the payment or part payment made by the respondent has been received by the arbitrator.

7. On 9th November 2019, the learned sole arbitrator noted that the claimant had yet again failed to comply with previous directions. No statement of claim had been filed and the arbitrator had even previously made it clear that without his directions as to payment being complied with, the statement of claim though served on 19th June 2019 would not be taken on record.

8. On 9th November 2019, in consequence of this continued default, the arbitrator terminated the arbitration under Section 38 and vacated the order of *status quo* of 20th May 2019.

9. The present petition was filed on 11th September 2019 i.e. well before the Section 38 termination. In view of the subsequent

events, it will not survive. The arbitral mandate has ended. The petition is infructuous and it is disposed of as such with liberty to the parties to adopt such proceedings as they may deem fit.

10. The accompanying petition under Section 9, Commercial Arbitration Petition No. 1038 of 2018 is also dismissed accordingly.

(G. S. PATEL, J)