



A.No.412 of 2022

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SENTHILKUMAR RAMAMOORTHY, J

The claimant before the arbitral tribunal is the applicant herein. The applicant seeks the assistance of the Court in terms of Section 27 of the Arbitration and Conciliation Act 1996 (Arbitration Act) for purpose of summoning three witnesses to depose before the arbitral tribunal.

2. Learned counsel for the applicant invited my attention to the order dated 27.10.2021 of the arbitral tribunal by which the applicant was permitted to approach this Court for assistance. In particular, he relied upon paragraphs 7 and 9 of the said order. Paragraph 7, in relevant part, reads as under:

“7 Having filed these documents in support of their allegation, it is incumbent upon the claimant to prove the same to the satisfaction of the Tribunal. If only on summons those witnesses will appear, then it is necessary for this Tribunal to decide as to how best the same could be achieved.”



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Paragraph 9 is set out below:

“9. Under the said circumstances, it is just and proper for this Tribunal to grant approval to the Claimant to approach the Hon'ble High Court of Madras seeking its assistance for issuing summons to the three witnesses referred to in the application (set out above) and to get an order for the Tribunal to record their evidence on such dates as it may indicate in that order.”

3. By drawing reference to an earlier order dated 18.04.2022, learned counsel pointed out that CMA No.3587 of 2021, which was filed by the respondent herein, was dismissed as withdrawn on 18.04.2022. Consequently, he submits that there is no challenge to the order dated 27.10.2021 and, therefore, the applicant is entitled to the assistance of this Court in summoning the witnesses.

4. Learned counsel for the respondent opposes this application on the ground that the Court should not lend assistance to the applicant to prove its case. In support of the contention that the



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Court should exercise its discretion to reject the application, learned counsel relied on the judgment of this Court in *Ennore Port Ltd. v. Hindustan Construction Co. Ltd.*, 2006 SCC Online Mad 870, particularly paragraphs 20, 25, 26, 27 to 30 thereof. Learned counsel pointed out that the Court rejected the request in the above judgment on the ground that the applicant was required to prove the case on his own evidence and not by taking support from the respondent. Learned counsel for the respondent also relied upon the judgment of the Hon'ble Supreme Court in *Delta Distilleries Limited v. United Spirits Limited* (2014) 1 SCC 113. After advertng to the contentions in paragraph 16, learned counsel relied upon the conclusion in paragraph 21 with regard to the purpose of Section 27 of the Arbitration Act. He also placed reliance on the judgment of the Delhi High in *Thiess Iviinecs India v. NTPC Limited*, 2016 SCC Online Del 1819.

5. Section 27 of the Arbitration Act is an enabling provision by which either the arbitral tribunal or a party to the arbitral proceedings, with the approval of the arbitral tribunal, may apply to the court for assistance in recording evidence. The said provision



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reads as under:

"27. Court assistance in taking evidence.—

(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify—

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,

—
(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of



the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents."

6. In the case at hand, the applicant/claimant intended to examine three witnesses. In relation thereto, an application was filed before the arbitral tribunal. As noticed earlier, the arbitral tribunal concluded in paragraph 7 that the claimant had filed certain documents and that it is incumbent on the claimant to prove the same to the satisfaction of the tribunal. For such purpose, the arbitral tribunal was of the view that the claimant should be permitted to approach this Court for assistance in issuing summons to the said three witnesses. Therefore, it is clear that the arbitral tribunal-which was in seisin of the dispute and before which evidence was being recorded-concluded that evidence of these witnesses is relevant for the purpose of adjudicating the dispute. The contention of learned counsel for the respondent that the Court has discretion under Section 27 to refuse the request is not devoid of merit. At the same time, it should be recognised that this is an enabling provision and the Court



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should not interfere with the discretion exercised by the arbitral tribunal unless compelling circumstances exist for refusing such request. In spite of best efforts in such regard, learned counsel for the respondent is unable to convince me that the facts and circumstances justify refusing the request for the Court's assistance.

7. For reasons set out above, the applicant is entitled to succeed. Accordingly, this application is allowed by issuing summons to the three witnesses whose names and addresses are set out in Schedule – B to the Judge's summons. Issue summons to the said witnesses returnable by 26.10.2022. All the witnesses shall appear before the arbitral tribunal on the said date. Thereafter, the arbitral tribunal may fix the dates for recording evidence after ascertaining the convenience of all concerned.

28.09.2022

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