

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO. 212 OF 2024

M/S. Pathfinder

....Petitioner

: Versus :

ICICI Bank Limited and others

....Respondents

Mr. Gaurang C. Jhaveri *i/b Mr. Harsh J. Nishar, for the Petitioner.*

Dr. Birendra Saraf, Senior Advocate *with Mr. V. Mannadiar i/b M/s. Mannadiar & Company, for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 26 March 2025.

P.C. :

1) The Contempt Petition is filed alleging breach of the order dated 18 August 2022 passed by the Arbitral Tribunal by which the Respondent-Bank was directed to produce various documents. It appears that initially the Petitioner filed an application under the provisions of sub-section (5) of Section 27 before the Arbitral Tribunal seeking reference in respect of allegation of breach of order dated 18 August 2022. By order dated 8 January 2024, the Arbitral Tribunal has passed following order on the said application :

24. In the light of the aforesaid observations, we pass the following order :

- a. The Contempt Application filed by the Claimant stands disposed-off as withdrawn, with liberty to the Claimant to prefer/file an appropriate proceedings before the Hon'ble High Court.
- b. The Striking-Off Application filed by the Claimant stands dismissed, however, an adverse inference will be drawn against the Respondent for non-production of documents which were directed to be produced by our Order dated 18.08.2022.
- c. No costs.

2) Thus, the Petitioner did not press the application filed under the provisions of sub-section (5) of Section 27 before the Arbitral Tribunal and withdrew the same with liberty to file appropriate proceedings before this Court. In pursuance of the said liberty, the present Contempt Petition is filed.

3) I have heard Mr. Jhaveri, the learned counsel appearing for the Petitioner and Dr. Saraf, learned Senior Advocate appearing for the Respondent.

4) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the order dated 18 August 2022 directed Respondent No.1-Bank to produce various documents. Para-33 of the order reads thus :

33. In the light of the above observations, we pass the following order :

- (a) The Application is partly allowed in terms of prayer clauses (d), (e) and (f) subject to the period for which documents are sought in (e) and (f) being limited to 12th December 2008.
- (b) The Respondent shall produce the said documents on or before 3 weeks from today and also provide inspection of the same to the Claimant.
- (c) The costs in the present Application shall be treated as costs in the main reference.

5) It is the case of Respondent No.1-Bank that it is unable to produce the said documents despite making every effort of tracing the same.

6) Dr. Saraf would question maintainability of the Contempt Petition by contending that the order passed by the Arbitral Tribunal on 18 August 2022 cannot be treated as an order passed under the provisions of Section 17 of the Arbitration and Conciliation Act, 1996 (*the Act*). He would submit that the said order can be traced to the provisions of Section 19 of the Act. In support of his contentions, he would rely upon the following three judgments :

- (i) *Maharashtra State Electricity Board Versus. Datar Switchgear Ltd.*¹
- (ii) *Silor Associates SA Verus. Bharat Heavy Electrical Ltd.*²
and
- (ii) *AEPL Infrastructure Pvt. Ltd. Versus. Tehdran Jonoob Technical and Construction Company*³

7) Since the order dated 18 August 2022 directs mere production of documents, it is difficult to hold that the order amounts to making of any interim measures by the Arbitral Tribunal within the meaning of Section 17 of the Act. It is merely a procedural order passed by the Tribunal under Section 19 of the Act. True it is that, under the provisions of sub-section (5) of Section 27, the Arbitral Tribunal can make a Reference or take such measures as felt necessary in the event of breach of even a procedural order. In the present case however, the Petitioner has withdrawn the application seeking reference under the provisions of Section 27(5) of the Act. The present Contempt Petition is

¹ 2002 SCC Online Bom 983

² 2014 SCC Online Del 3407

³ R/Petn No.66/2022 decided on 5 May 2023 by High Court of Gujarat at Ahmedabad

filed as if the order dated 18 August 2022 is an order passed by the Arbitral Tribunal under Section 17 of the Act. Though, the Arbitral Tribunal is invested with jurisdiction to make a reference in respect of breach of procedural order under the provisions of sub-section (5) of Section 27, breach of a procedural order cannot give rise to a remedy to file direct Contempt Petition before this Court. As observed above, the Petitioner has given up the remedy of filing reference under Section 27(5) by withdrawing the application before the Arbitral Tribunal. Since the order dated 18 August 2022 is not passed under the provisions of Section 17 of the Act the same cannot be construed as if it is an order passed by a Court, I am therefore not inclined to entertain the Contempt Petition.

8) Even otherwise, the Respondent No.1-Bank has taken a specific defence that it is unable to trace the documents, production of which is directed by order dated 18 August 2022. The Arbitral Tribunal has already taken an adverse view in respect of the action of Respondent No.1 and has directed that an adverse inference shall be drawn against Respondent No.1 for non-production of documents in accordance with the order dated 18 August 2022. In that view of the matter, I am not inclined to entertain the present Contempt Petition. The Contempt Petition is **dismissed**.

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[SANDEEP V. MARNE, J.]