

**HON'BLE JUSTICE MOUSHUMI BHATTACHARYA  
AND  
HON'BLE JUSTICE M.G. PRIYADARSHINI**

**CIVIL REVISION PETITION No.2401 OF 2024**

**ORDER:** *(Per Justice Moushumi Bhattacharya)*

The Civil Revision Petition (CRP) arises out of an order dated 02.07.2024 passed by the XXIV Additional Civil Judge, City Civil Court, at Hyderabad ('Trial Court') in a petition filed by the petitioner under section 27 of The Arbitration and Conciliation Act, 1996 for the purpose of issuing summons to the witnesses in terms of an order passed by the Arbitral Tribunal on 07.04.2024.

2. The learned Judge disposed of the Arbitration Original Petition (AOP.No.527 of 2024) by directing the office of the Court to re-submit the record to the Arbitral Tribunal. The Learned Judge considered the report of the Bailiff of the District and Sessions Court, Bengaluru Rural District, recording that both the witnesses were called absent on the returnable date despite service of summons. The Court accordingly closed the case by recording that the evidence could not be taken.

3. Learned Senior Counsel appearing for the petitioner (the claimant in the arbitration) submits that the Court should have taken steps under Order XVI Rule 10 of The Code of Civil Procedure, 1908

(CPC) and issued appropriate directions. Counsel submits that the Court was under a bounden duty to secure the presence of the 2 witnesses and render complete justice in the matter which the Court failed to do. Counsel submits that this is a fit case for revision of the order passed by the Trial Court.

4. Learned Senior Counsel appearing for the respondent argues on the maintainability of the CRP as well as on the conduct of the revision petitioner. Counsel submits that the learned Arbitrator was appointed by the Supreme Court and the Supreme Court by its order dated 11.03.2024 extended the time for completion of arbitration till 15.09.2024. Counsel has filed a compilation of documents to show the lack of diligence on the part of the petitioner as also the petitioner's failure to seek further extension of time for completion of arbitration.

5. We have heard learned counsel appearing for the parties and think it appropriate to first deal with the law relevant to the controversy.

6. The genesis of the present CRP arises out of an order passed by the learned Arbitrator on 07.04.2024 in an Application filed by the

petitioner/claimant for approaching the Principal Special Court at Hyderabad to summon 2 witnesses. The Arbitrator allowed the Application and permitted the petitioner to make an application for seeking assistance in taking evidence before the Court under section 27 of the 1996 Act within 10 days from the date of the order. The Arbitrator further directed that the entire proceedings should be completed within 1 month from the date of filing of the Application in view of the time limit fixed by the Supreme Court for completing the Arbitration by 15.09.2024. The petitioner approached the Trial Court under section 27 of the 1996 Act for issuing summons and examination of the 2 witnesses.

7. The subject matter of the CRP is that the Trial Court closed the petitioner's application and directed for re-submission of the record to the Arbitral Tribunal without enforcing the attendance of the witnesses.

Deconstructing Section 27 of The Arbitration and Conciliation Act, 1996

8. Section 27 of the 1996 Act provides for "Court Assistance in Taking Evidence". Section 27 contemplates 5 distinct components which are sequential in nature. These are:

- (i) An Application by the Arbitral Tribunal or a party in the arbitration (with the approval of the Arbitral Tribunal) to the Court for assistance in taking evidence. The Court must be a Court as defined under section 2(1)(e) of the 1996 Act, meaning thereby, the Principal Civil Court of original jurisdiction in a district or the High Court exercising ordinary original jurisdiction having jurisdiction to decide the question forming the subject-matter of the arbitration as if the same was the subject-matter of a Suit – section 27(1).
- (ii) Section 27(2) specifies the contents of the Application as provided under section 27(1).
- (iii) Execution of the request made by the Arbitral Tribunal/party before the competent Court. The execution may be in the form of the Court making an order for the evidence to be directly provided to the Arbitral Tribunal – section 27(3).
- (iv) The Court may issue the same process to the witness as in trial of Suits for execution of the request made to it – section 27(4).

- (v) Filing of a representation by the Arbitral Tribunal to the Court for bringing to the notice of the latter of the failure of the persons to attend or refusing to give evidence despite receipt of Summons – section 27(5).
- (vi) The Court may impose penalties/punishment or put the erring party to some disadvantage on receipt of the representation of Arbitral Tribunal. The penalties may be similar to those visiting an offending party in a Suit before the Court – section 27(5).

Order XVI Rule 10 of the CPC provides procedural teeth to section 27 of the 1996 Act

9. Section 27(5) of the 1996 Act, i.e, the Court issuing process to witnesses and punishing for disobedience attracts Order XVI Rule 10 of The Code of Civil Procedure, 1908 – “Procedure when Witnesses fail to comply with Summons”.

10. Order XVI Rule 10 (2) provides that the Court may issue a proclamation requiring a person to attend to give evidence or to produce a document at a designated time and place when the Court has a reason to believe that the person has failed to do so pursuant to

the Summons issued under Order XVI Rule 10(1) or has intentionally avoided service without lawful excuse.

11. Order XVI Rule 10(3) further empowers the Court to exercise its discretion to issue a warrant, with or without bail, for arrest of such person and attach the property of the person or impose fine in lieu of or at the time of issuing proclamation or even afterwards.

Both statutes act in tandem against Disobedience

12. Section 27 of the 1996 Act read with Order XVI Rule 10 of the CPC makes it clear that the Court under section 2(1)(e) of the 1996 Act is conferred with discretion to issue summons and processes for recording the evidence of the witnesses or for production of documents and is also empowered to issue proclamation as well as a warrant of arrest and orders of attachment of property and fine on the failure of the person to appear before the Court or produce the documents in compliance of the summons without a legally tenable cause. The Court can however invoke its discretionary powers under Order XVI Rule 10 of the CPC only after the disobedience/failure of the summoned persons is brought to the Court's notice under section 27(5) of the 1996 Act.

The Arbitral Tribunal is the Fulcrum and the Facilitator under Section 27 of the 1996 Act

13. Section 27 makes it clear that the Arbitral Tribunal is the pivot for setting the process of taking of evidence in motion. The Arbitral Tribunal takes the first step in applying to the Court for assistance in the matter of taking evidence or granting approval to a party to do the same – 27(1). The Arbitral Tribunal again becomes the repository of the evidence which the Court orders under 27(3). The Arbitral Tribunal is the deciding-body with regard to the default or refusal of persons to give evidence despite being served by Court processes or being guilty of any contempt of any direction given by the Arbitral Tribunal in the conduct of arbitral process – 27(5). Finally, the Arbitral Tribunal carries the disobedience/default by way of a representation to the Court for appropriate orders – 27(5).

14. The consistent strain running through section 27 of the 1996 Act is of the Arbitral Tribunal seeking recourse for taking evidence/production of documents and again returning to the Court for appropriate action in the event of disobedience by these persons. In essence, section 27 contemplates filling in the void in the 1996 Act with regard to the Arbitrator's powers for effective conduct of the

arbitration. In other words, section 27 of the 1996 Act is an enabler or Court assistance for taking evidence while Order XVI Rule 10 gives the necessary statutory muscle to ensure recording of evidence by the Arbitral Tribunal.

15. The construction of section 27 of the 1996 Act read with Order XVI Rule 10 of the CPC would expose the infirmity in the plea taken on behalf of the petitioner. The reasons follow.

The CRP is misconceived

16. In the present case, the petitioner has come up in revision from the Trial Court closing the petitioner's application for summoning the witnesses. Section 27 (5) contemplates such a complaint/action only being initiated by the Arbitral Tribunal in the form of a representation to the Court. The exclusivity given to the Arbitral Tribunal to make such a representation would be clear from the language of section 27(5) omitting the party to make such a representation. Section 27(5) may be contrasted with section 27(1) where either the Arbitral Tribunal or a party (with the approval of the Arbitral Tribunal) may apply to the Court for assistance in taking evidence. Therefore, the CRP filed from the order of the Court with the prayer for setting aside



the order passed by the Court on 02.07.2024 is misconceived as being contrary to section 27 of The Arbitration and Conciliation Act, 1996.

17. Similarly, the petitioner's application for stay of the Arbitral proceedings is also misconceived on the same ground and also for the reasons stated in the next section of the judgment.

The petitioner's conduct frustrates the direction of the Supreme Court

18. The admitted dates which are relevant to the present adjudication are as follows.

19. The Supreme Court appointed Justice Ramesh Ranganathan as the Arbitrator on 08.04.2021. Justice Ramesh Ranganathan recused on 24.12.2022. The claimant applied for extension of Arbitrator's mandate and Justice C.Praveen Kumar (Retd.) was appointed as the Arbitrator on 17.04.2023. The evidence of the respondent was concluded on 16.09.2023. The Arbitrator by his order dated 06.10.2023 requested the parties to file an Application before the appropriate forum seeking extension of time in passing the Award. The Arbitrator sent an e-Mail on 28.10.2023 stating that the Arbitrator's mandate would expire on 29.10.2023.

20. The petitioner/claimant did not take any steps for extension of the Arbitrator's mandate and instead sent a Memo dated 28.10.2023 stating that the mandate of the Arbitral Tribunal stood terminated on 28.10.2023. The petitioner sent another e-Mail requesting the Arbitrator not to proceed with the arbitration as the mandate stood terminated. These facts are recorded by the Arbitrator in an order passed by the Arbitrator on 30.10.2023.

21. The petitioner filed an Application before the Supreme Court for extension of the time for passing of the Award on 30.10.2023. The petitioner also filed a Miscellaneous Application before the Supreme Court for substitution of the Arbitrator and seeking termination of Arbitrator's mandate on 21.11.2023. By an order dated 11.03.2024, the Supreme Court extended the time for completion of the arbitral proceedings till 15.09.2024 and allowed the petitioner to withdraw the Miscellaneous Application for substitution of the Arbitrator.

22. The petitioner filed an IA for the Arbitrator's consent to file an Application before the Principal Special Court under section 27 of the 1996 Act for summoning 2 witnesses. The Arbitrator allowed the IA on 07.04.2024. The Arbitrator thereafter passed an order on 24.06.2024 recording that the petitioner was given 10 days to make

an Application before the concerned Court under section 27 of the 1996 Act for recording evidence of the 2 witnesses and had further directed that the entire process should be completed within 1 month from the date of filing of the Application. The order records that the Arbitrator sent a mail to the parties reminding them of the order passed by the Supreme Court since the Arbitrator did not receive any response with regard to the permission given to the petitioner.

23. The Court passed the impugned order in the CRP on 02.07.2024. The petitioner thereafter sought for an adjournment of the arbitration on the ground of its advocate being pre-occupied "*in some urgent pressing matters*". The Arbitrator records this in an order dated 05.07.2024. The Arbitrator passed another order on the returnable date i.e., on 08.07.2024 recording that the petitioner filed an application for taking additional facts and documents on record and that the petitioner had also taken steps to challenge the order passed by the Court on 02.07.2024. The order records that counsel appearing for the petitioner sought an adjournment for 2 weeks.

24. The petitioner filed yet another Application before the Arbitral Tribunal on 31.07.2024 for keeping further proceedings in abeyance. The Arbitrator passed an order in this application on 01.08.2024

stating that the arbitration would proceed unless the petitioner obtains stay in the CRP filed in the High Court. The order records that the petitioner had a Civil Miscellaneous Appeal (CMA) in the High Court and sought an adjournment for that reason.

25. The petitioner thereafter filed a Memo on 02.08.2024 in respect of the order passed by the Arbitrator on 01.08.2024 alleging that the petitioner had been denied a fair opportunity to present his case and is in the process of filing an application for substitution and termination of the arbitrator's mandate. The petitioner also sent a Memo by way of an e-Mail on 03.08.2024 stating that the petitioner has no intention of attending the arbitration on 03.08.2024 for making final arguments. The Arbitrator records receipt of the e-Mail by order dated 03.08.2024 and that there is no representation or assistance received from the petitioner and that the arbitration will proceed in the usual course on 06.08.2024. Final arguments commenced on 06.08.2024. The Arbitrator also dismissed the application made by the petitioner for keeping the arbitration in abeyance on that date. A further order was passed on 19.08.2024 recording that arguments were taken up on the virtual mode and that there was no representation on behalf of the petitioner. The order

records that Senior Counsel appearing for the respondent completed his arguments on that date.

26. The detailed narration has been given only to show the conduct of the petitioner. The sequence of events would reflect that the petitioner remained unrepresented and played truant with the arbitration proceedings after 08.07.2024 despite being fully aware that the Supreme Court had passed an order on the petitioner's Application, for completion of the arbitration by 15.09.2024. In taking repeated adjournments and filing Applications/Memos either for keeping the arbitration in abeyance or substitution of the Arbitrator, the petitioner showed scant regard for the sanctity of the arbitration or respect for the time frame stipulated by the Supreme Court.

### Conclusion

27. The recalcitrance on the part of the petitioner to proceed with the arbitration would belie the conduct expected of a claimant who would usually be interested in the arbitration being completed within the statutory time limits. As on the date of filing of the CRP and of making arguments, the petitioner's failure to apply for extension before the Supreme Court is significant in the face of the repeated adjournments taken by the petitioner. In short, the petitioner has

been resistant to the timelines fixed by the Supreme Court, unreasonable in his insistence on adjournments and unapologetic at all the times. The petitioner appears to have explored all options to scuttle the arbitration. The petitioner sought to take benefit of the enabling provision of section 27 of the 1996 Act in order to disable the arbitration and circumvent the timeline fixed by the Supreme Court. The petitioner has thus disentitled himself from any equitable relief from a Court of law.

28. Without prejudice to the above, the present CRP is contrary to the scope and purport of section 27 of the 1996 Act and overreaches the contours of the said provision in short-cutting the procedure and sidelining the Arbitral Tribunal.

29. The decisions cited on behalf of the petitioner, namely, *Suresh Nath Modi Vs. LRs of Jorawarmal*<sup>1</sup> and *M/s.National Rice and Dal Mill Vs. The Food Corportion of India*<sup>2</sup> were passed in the context of the Court's power enforcing attendance of witnesses under Order XVI Rule 10 of the CPC but without reference to section 27 of the 1996 Act. Hence, these decisions do not assist the petitioner. *Sri Krishan*

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<sup>1</sup>1999 SCC OnLine RAJ 87

<sup>2</sup>1971 SCC OnLine PNH 296

*Vs. Anand*<sup>3</sup> held that the Court would be competent to deal with a party in default or in contempt once it receives a representation from the Arbitral Tribunal.

30. The discussion in the foregoing paragraphs lead us to the inevitable conclusion that the Civil Revision Petition must fail. Apart from the fact that the CRP does not have a statutory basis, the petitioner is not entitled to any relief by reason of the conduct detailed above. We therefore hold that the CRP is devoid of merit and should be dismissed at the very outset.

31. CRP.No.2401 of 2024, along with all connected applications, is accordingly dismissed. There shall be no order as to costs.

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**MOUSHUMI BHATTACHARYA, J**

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**M.G.PRIYADARSINI, J**

**September 6, 2024**  
*BMS*

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<sup>3</sup>2009 (3) ARBLR 447 (Delhi) : MANU/DE/1828/2009