

PRODUCTION OF
**DOCUMENTS IN
ARBITRATION**
PROCEEDINGS IN INDIA



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Introduction:

Arbitration proceedings in India are governed by Arbitration and conciliation Act, 1996. In many cases the parties may not have all the relevant documents in their possession and the relevant documents may be with the opposite party or any other person involved in the project. Without that document the party may not be able to effectively prove its case and in such situations the party can seek the party in possession of those documents to produce them in the interest of justice. Whole world recognises discovery of documents and hence Indian Act also provides for it. Section 27 of the above said Act provides for seeking court assistance in taking the evidence. This section provides for a procedure by which a party can apply to the appropriate court seeking to issue summons to anybody asking him to be a witness before the arbitral tribunal or produce certain records relevant to the arbitration proceedings. The Court may order directing the witness to attend the arbitration proceedings or to produce some records. It is important to note that the above said Act, does not empower the Arbitrator to

- (a) Commit any person for contempt of Court *Krusell Vs Timber operators & contractors Limited*
- (b) Cannot pass an injunction order or appointment of receiver
- (c) Stay of any legal proceedings

Hence if any of the party or the arbitrator him-self can seek the assistance of the court to get such interim orders.

In case of failure of the witness to be present in the arbitration as directed or refusing to produce the document as per the orders of the court:

S.27(5) of the Arbitration and conciliation Act, 1996 provides for a contempt action against the persons failing to attend in accordance with such process, or making any default, or refusing to give their evidence, or guilty of contempt of arbitration tribunal during the conduct of the arbitration proceedings, shall be subject to the disadvantages, penalties and punishments by the order of the court on the representation of the arbitration tribunal as they would incur for the like offences in suits tried before the court.

Dealing with an Application filed under S.27 by a party before the Arbitration tribunal seeking leave to approach the appropriate court seeking the attendance of a witness or production of a document:

Even though the parties should be given sufficient opportunity to prove their case by producing witnesses and documents necessary to support their case, it is also necessary that the arbitration tribunal must apply its mind to find out if there is any relevance to call that witness or production of a document and pass an order permitting the party to approach the court. The Arbitration tribunal need not mechanically allow such applications when the parties approach the tribunal

under S.27. Even though the obtaining of evidence may be regarded as being strictly a matter for the parties to decide, the involvement of the tribunal would be necessary in preventing dilatory tactics of a party. (Hindustan Petroleum Corporation Vs Ashok Kumar Garg (2007) 1 Arb LR368.

It is also important that if any one of the party approaches the appropriate Court seeking a direction under S.27 of the Act without the permission of the arbitration tribunal, the said application is not maintainable because as per S.27 the permission of the arbitration tribunal is mandatory. Satinder Narayan Singh Vs Indian labour co-operative Society Ltd., (2008) 1Arb LR 355.

Whether Courts can decline an application under S.27 of the Act?

Normally in the interest of the fairness and justice Courts order the applications under S.27 of the Act. But the following are the situations where Courts have declined to exercise their discretion to issue directions under S.27 of the Act,

- (a) When the tribunal has not permitted the party to file an application under S.27 of the Act,
- (b) When the witnesses are in a foreign country Reliance Polycrrete Vs National Agricultural co-operative Market Federation of India (2009)2 RAJ384 (Del)
- (c) When the documents required to be produced can jeopardise one of the party in some way Ennore Port

Limited Vs Hindustan Construction Co. Ltd., AIR 2007 Mad73

- (d) When the documents required to be produced are confidential documents

Whether a Court can direct confidential documents be produced in an Arbitration under a direction under S.27 of the Act?

The Courts generally have the power to direct the parties to produce documents which are in their possession. But some statutory provisions bar the government officials from producing some confidential documents like income tax returns, Sales tax returns etc., As per Section 54(1) of the Income tax Act, 1922 there is a bar on production of documents mentioned therein by officials and other servants of the Income tax department and made it obligatory on them to treat as confidential the records and documents mentioned therein. A similar provision S. 71(1) & 64(1) is incorporated in the Bombay Sales Tax Act, 2002, prohibiting production of returns, accounts or documents produced by the parties, except when demanded by the criminal courts.

Taking advantage of the above said provisions some parties refused to produce these documents claiming that these are confidential documents. But at the same time when this issue came up before the Supreme Court of India while deciding Tulsiram Sanganaria and another Vs Srimati Anni Rai and others (1971) 1SCC 284 it was held that those tax returns are confidential documents for the government officials and hence they should not produce it but when there is a

claim in an arbitration on the basis of tax returns there is no bar for the parties producing them instead of going for a tentative calculation. The same view was followed by the Supreme Court of India in Delta Distilleries Limited Vs United Spirits Limited and another.

Hence the confidentiality provided in the tax legislations is to bar the government officials from producing in another proceeding and not for the parties who are claiming amounts based on the tax returns.

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Mr S Ravi Shankar is an experienced Supreme Court lawyer with more than 20 years of practice to his credit. He is holding a Master's Degree in Business administration and a bachelor Degree in Law. He is a known speaker and has travelled across the Globe. As a member of International Bar Association (IBA), international Law Association (ILA), International Trade Mark Association (INTA), Chartered Institute of Arbitration, Asian Corporate Law Association, Supreme Court Advocates Association, Law Senate Partner Mr. S. Ravi Shankar has extensive experience in arbitration matters and defending the enforceability of the Awards in courts throughout India and other countries. He is also having expertise in corporate legal matters and Supreme Court of India cases.

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