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## NAVIGATING THE LAW ON PRODUCTION OF EVIDENCE UNDER SECTION 27 OF THE ARBITRATION AND CONCILIATION ACT, 1996

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Production of evidence plays a pivotal role in arbitration proceedings where parties seek to rely on evidence which is not in their possession. This can be achieved under section 27 of the Arbitration and Conciliation Act (hereinafter "**the Act**") by seeking the court's assistance in compelling the other party to produce such evidence. This brief article aims to explore the legal complexities and nuances associated with evidence production under section 27 of the Act.

Section 27 of the Act grants authority to the arbitral tribunal or any party, with the tribunal's approval, to seek the court's assistance in production of evidence, documents or witnesses. This provision allows the court to issue orders after considering the application, treating the matter in a manner similar to producing evidence and witnesses in civil suits.

### ***Role of arbitral tribunal***

For starters, it must be borne in mind that the arbitral tribunal is empowered on its own to direct a party to produce documents, and it is only upon such party's rejection to comply with the tribunal's direction, that the party aggrieved by the non-production of documents, may require the arbitral tribunal seek the assistance of the court by resorting to section 27 of the Act. It is for this reason that the parties cannot directly approach the courts for assistance under section 27 as established in [Satinder Narayan Singh v. Indian Labour Co-operative Society](#). It is essential for parties to first seek permission from the arbitral tribunal before filing an application under section 27, wherein the discretion lies with the tribunal to grant or reject such request as laid down in [Hindustan Petroleum Corpn. Ltd. v. Ashok Kumar Garg](#). On receiving an application by the aggrieved party, the arbitral tribunal has to examine the relevancy of the witnesses summoned and/or document demanded to be produced before approaching a court under section 27 of the Act. In [Dillip v. Errol Moraes](#), the Bombay High Court decided that the arbitral tribunal is the best forum to decide the relevancy or materiality of any document or witnesses as it is the master of the proceedings before it, and in the same vein, the Delhi High Court in [Hindustan Petroleum \(Supra\)](#) and [Silor Associates v. Bharat Heavy Electrical Ltd.](#), observed that the arbitral tribunal must at least on a *prima facie* basis, examine the relevancy and materiality of the witness intended to be presented before the court exercises the powers conferred to it under section 27. The courts have held in catena of judgements, including [SAIL v. Uniper Global Commodities](#) and [Silor Industries \(Supra\)](#) that while the arbitral tribunal is not constrained by the rules of procedure outlined in the Code of Civil Procedure or

the Evidence Act, it should still use fair and reasonable methods for determining the relevancy and admissibility of evidence and witnesses.

The rationale behind the above decisions can be gathered from the Bombay High Court's ruling in [National Insurance Company Limited v. M/S S.A. Enterprises](#) wherein the court held that the primary objective of section 27 of the Act, is only to aid the tribunal and any party in expediting the arbitration proceedings, as the arbitral tribunal lacks the competence to compel a party or a witness to give evidence before it or to produce a document before it.

### **Courts power under section 27**

The judicial intervention entailed under section 27 of the Act does not in any manner confer adjudicatory powers to the Courts. The Delhi High Court in [Thiess Iviinecs India v. Ntpc Limited & Anr.](#) while analysing the scope of section 27 read with section 5 of the Act, ruled that the judiciary has very limited scope to intervene in matters of arbitration, wherein 'competence' prescribed under section 27(3) of the Act cannot be misunderstood as courts having power to determine the admissibility or relevancy of any evidence. In [Montana Developers Pvt. Ltd v. Aditya Developers](#) it was observed by the Bombay High Court that when an application seeking assistance under section 27 is filed following an order issued by the arbitral tribunal, the court cannot delve into the merits of such an application or the order itself.

However, having stated the aforesaid, section 27 of the Act does confer the courts with a certain discretion while dealing with an application seeking assistance for summoning of witnesses or for production of documents. The inclusion of the words 'may' and 'execute' in section 27(3) of the Act explains the legislature's intent to provide the courts with the discretion to pass such an order. In [Silor Industries \(Supra\)](#) and [Ennore Port Ltd. v. Hindustan Construction Co. Ltd.](#) it was observed that even though the Courts cannot itself sit in appeal over the arbitral tribunal's decision, or act as adjudicatory authority, the courts are not obligated to mechanically act on an arbitral tribunal's request even when such request is based on an incorrect application or misunderstanding of legal principles.

The courts while exercising its discretion can reject an arbitral tribunal's request on *inter alia* the following grounds:

1. **Summoning of foreign witness:** In [Reliance Polycrete Ltd. v. National Agricultural Co-operative Marketing Federation of India](#), the Delhi High Court while dealing with the issue of summoning a foreign witness explained that it was beyond its "competence." The court cited difficulty in ensuring the attendance of such a witness, and also noted logistical challenges in assembling such witnesses. On the contrary, the Bombay High Court took a different stance recently in [Stemcor \(S.E.A.\) Pte Limited and Anr. v. Mideast Integrated Steels Limited](#). The court while considering an application under section 27 of the Arbitration Act, deemed the witness's evidence crucial to the arbitration. Consequently, the court appointed the arbitrator as a Court Commissioner and directed a team of lawyers, along with the Court Commissioner (arbitrator), to travel to Singapore to record the key witness's evidence.
2. **Documents relate to criminal proceedings:** When the documents requested to be produced are linked to criminal proceedings and its production could significantly prejudice the respondent's defence, the courts can reject the production of such documents as decided in [Ennore Ports \(Supra\)](#).

3. **Documents produced are confidential in nature:** The confidential nature of the documents can be a ground of rejection under section 27 of the Act. However, merely raising such an objection would not suffice and a court will examine whether production of the documents sought can be denied on the basis of a plea of confidentiality. In [\*Delta Distilleries Ltd vs United Spirits Limited & Anr\*](#), the party opposing the production of documents cited a provision of the Maharashtra Value Added Tax Act to contend that it prohibits the production of any record of any assessment proceeding and they should be treated as confidential. It was held by the Bombay High Court that the production of such documents shall not be denied when the statutory provisions bar its production only by the government officials and not by the private parties who are directed to produce it.
4. **Misinterpretation or misconception of law:** When the arbitral tribunal's order is made either without proper consideration or based on a misconception of the law, as held in the *Hindustan Petroleum* (Supra).
5. When it is revealed from the record that the arbitral tribunal has *prima facie* failed to consider the relevancy and materiality of the witness or documents sought to be produced and permitted a party to seek assistance of the Court in a mechanical manner.

### **Conclusion**

There is no gainsaying that the primary objective of arbitration is to ensure both timely and effective adjudication of disputes between parties. No one facet can be said to be more important than the other. An award which is passed in a timely manner, but which fails to ensure effective adjudication owing to the arbitral tribunal's inability to compel a party to produce a certain witness or evidence can hardly be said to have met the goals set to be achieved.

Section 27 of the Act thus plays a very crucial role as it specifically provides for enabling the arbitral tribunal to obtain evidence with the assistance of the court, which it finds necessary for complete and effective adjudication of the dispute between the parties.