

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 24 of 2014 (O&M)

Date of Decision: 06.02.2015

M/s Global Land Masters Corporation Ltd.

..Petitioner

versus

Tribune Employees & Friends Coop. Group Housing Society Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.

Present : Mr. P.S.Rana, Advocate, for the petitioner.
Mr. R.S.Randhawa, Advocate, for the respondent.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an application under Section 11(5) of the Arbitration & Conciliation Act, 1996 (for short 'the Act') for appointment of an Arbitrator in accordance with Clause 33 of the agreement dated 05.04.2012 which reads as under:-

"that in case of any dispute between the first party and second party, the same shall be referred to the Arbitrator which will be mutually agreed between both the parties at the appropriate state (*sic*) through negotiation or as per the Act."

2. There is no dispute regarding the execution of the agreement as well as the above clause relating to the arbitration. It is, however, contended by learned counsel for the respondent that the agreement was brought about by coercion and undue influence. These are the matters which must be left to the decision of the Arbitrator. Reliance in this regard is rightly placed on the judgment of the Supreme Court in ***Swiss Timing Limited v. Commonwealth Games 2010 Organising Committee*** **2014(6) Supreme Court Cases 677.**

3. The next contention of the respondent is that the petitioner is not entitled to any relief in view of Clause 7 of the agreement which reads as under:-

"7. That it has also been agreed that in case the High Power Committee decides against the first party "The Society" this collaboration agreement done with the second party "The Developer" shall terminate itself without any notice to the second party "The Developer" and in that case the second party "the Developer" will have no claim whatsoever against first party "The Society".

4. The agreement was terminated on 28.12.2013. The dispute between the parties arose on account thereof. Obviously one of the disputes is whether the termination was valid or not. I was informed across the bar that the High Power Committee has recently decided the case against the respondent-Society. Even assuming that to be so, the circumstance in which the High Power Committee decided the case against the first party "The Society" will have to be considered. Even the construction of the clause requires consideration. One of the issues is whether the decision of the High Power Committee itself results in termination of the agreement or whether the termination would be only upon the outcome of a challenge to the said decision of the High Power Committee. In other words, the question that would arise is whether the clause contemplates the agreement being terminated upon the decision of the High Power Committee alone or whether it will be terminated only in the event of the decision of the High Power Committee being upheld in the event of the same being challenged. There is considerable substance in the respondent's contention that the agreement would stand terminated merely upon the decision of the High Power Committee. There may be very good reason for the same as well. The matter, however, is not open

and shut. In the circumstances, it would not be appropriate to ignore the arbitration clause.

5. The petition is accordingly disposed of by appointing Justice R.S.Mongia, former Chief Justice of the Assam High Court, as sole Arbitrator to adjudicate upon the disputes between the parties. The learned Arbitrator shall fix his own fee.

06.02.2015
'ravinder'

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE