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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5624 of 2016 (O&M)
Date of Decision: 13.12.2022

TRIBUNAL EMPLOYEES AND FRIENDS COOP GROUP
HOUSING SOCIETY LTD.

.....Petitioner

Vs

M/S GLOBAL LAND MASTERS CORPORATION LIMITED.

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ravinder Singh Randhawa, Advocate
for the petitioner.

Mr. P.S. Rana, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. The present revision petition has been preferred by the petitioner against the orders dated 30.07.2016 and 16.08.2016 passed by the Sole Arbitrator declining the prayer for cross-examination of the respondent-claimant and witness in the counter-claim as well.

[2]. Notice of motion was passed on 31.08.2016 and following order was passed by the Co-ordinate Bench of this Court:-

“Learned Senior Counsel for the petitioner contends that the parties in support of their claims and written statement, filed certain documents on 26.02.2016. Thereafter, the matter was listed for 21.03.2016 wherein

the learned Arbitrator had called upon the claimants for final hearing of the matter. The aforementioned orders are reproduced as under:-

“As per the last order dated 9.2.2016, learned counsel for the respondent has filed certain documents in support of the counter-claim and in support of the written statement to the claim. Copy thereof has been given to the counsel for the claimant. Now to come up for 21.03.2016 to enable the claimant to file any document in support of the claim and also admitting/denying the documents filed by the respondent in support of counter-claim. Learned counsel for the claimant has paid Rs.45,000/- vide cheque No.087291 of IDBI Bank towards the arbitral fee for five hearings in the counter claim. Learned counsel for the respondent (counter claimant) has yet to pay the fee for five hearings in the counter-claim. Let it be paid on or before 14.03.2016. To be taken up at 12 O'clock in the High Court, Chandigarh, Lok Adalat Bench No.1 on 21.03.2016.

(R.S. Mongia)

26.2.2016

Sole Arbitrator

“Learned counsel for the claimant states that he has not to file any further documents in support of the claim. So far as admission and denial of the documents produced by the respondent is concerned the claimant has already admitted or denied those documents. However, one document which was filed by the respondent on the last date of hearing has also been denied today by the claimant. Now to come up for arguments on 30.04.2016. It will be seen during the course of arguments if any denied document

is to be proved by any of the parties liberty would be given to prove the same if need arises depending upon the relevancy of the document(s). Adjourned to 30.04.2016 at 11.30 a.m. Next hearing will take place in the Arbitration Centre, Sector 17, Chandigarh. The Arbitration fee in the counter claim has yet to be paid by the respondent. Learned counsel prays for time to do the needful. He states that it will be done within a week failing which the counter-claim may be dismissed. Let the fee be paid within one week from today.

*(R.S. Mongia)
Chief Justice (retd.)
Sole Arbitrator*

21.3.2016

Mr. Anupam Gupta, learned Senior Counsel

appearing for the petitioner submits that the Arbitrator was enjoined to comply with provisions of Section 8 and could have also taken the aid of Section 27 of the Arbitration and Conciliation Act. He also relies upon judgment of Hon'ble Supreme Court in Mallikarjun Vs. Gulbarga University (2004) 1 SCC 372 to contend that the principles of natural justice are inherent in the arbitral proceedings. The application for cross-examination of the claimants as well as adducing the witnesses in the affirmative in support of defence was moved but the same has erroneously been dismissed. Mr. Randhawa, states that the next date before the Arbitrator is 01.09.2016.

Notice of motion for 27.09.2016.

Dasti as well.

In the meantime, further proceedings before the Arbitrator shall remain stayed.

Copy of this order be given to the counsel appearing for the petitioner under the signatures of Reader

attached to this Bench.

**(AMIT RAWAL)
JUDGE**

August 31, 2016
Pankaj*”

[3]. Learned counsel for the parties are *ad idem* that the sole Arbitrator has already expired on 02.08.2017 and new Arbitrator has to be substituted in his place. The respondent has already filed ARB No.90 of 2021 which is still pending and is fixed for 27.01.2023.

[4]. During course of arguments, learned counsel for both the parties agree that the pleadings in the arbitration case are complete. Some evidence has also been led, but in view of substitution of the Arbitrator, Section 15(3) of the Arbitration and Conciliation Act, 1996 can be resorted to and both the parties have agreed that the substituted Arbitrator may proceed with the proceedings from the stage of completion of pleadings onward. The impugned orders passed by the former Arbitrator may be annulled. Section 15(2) of the aforesaid Act prescribes that where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. Section 15(3) of the Act provides unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the

discretion of the arbitral tribunal.

[5]. In view of aforesaid legal position, in my considered opinion, the consensus arrived at between the parties for annulling the impugned orders is justified.

[6]. In view of consensus arrived at between the parties, the impugned orders dated 30.07.2016 and 16.08.2016 passed by the sole Arbitrator are set aside. Normal consequences to follow. Petition stands disposed of.

[7]. Pending application(s), if any, stand disposed of.

December 13, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No