

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 146 of 2013 (O&M)
Date of Decision: 28.03.2014

Everest Farm Houses Pvt. Ltd. ..Petitioner

Versus

M/s Velocity Fitness City Pvt. Ltd. ..Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE.

Present : Ms. Mudrika Bansal, Advocate, for the petitioner.

Mr. Ravi K.Matto, Advocate and
Mr. Hardy Singh, Advocate, for the respondent.

SANJAY KISHAN KAUL C.J. (Oral)

Petitioner granted a lease to the respondent in respect of shop measuring 1400 sq. feet situated on the first floor in the multi-storied commercial building known as Mega Mall, DLF City, Tehsil and District Gurgaon, for a period of five years w.e.f. 01.05.2008 to 30.04.2013 on terms and conditions specified therein. This agreement contains an arbitration clause as under:-

“That if any dispute arises out of this agreement the same shall be referred to sole arbitrator appointed with the consent of both the parties and the award of the arbitrator shall be final and binding on both the parties.”

2. It is the case of the petitioner that as per clause-1 of the lease-deed, there was lock-in-period of three years with amount payable of ₹ 1,47,000/- per month @ 105 per sq. feet as rent with escalation of 5% after every one year on the last rent cheque. It is, however, not necessary to go into the details of the terms and conditions of the agreement but suffice to say that the allegation of the petitioner is that the respondent failed to pay rent from January, 2009 onwards as also the maintenance charges. The

petitioner sent a legal notice dated 12.12.2011 invoking the arbitration clause. In the letter there was a recital of facts with a proposal in para No. 13 of the notice proposing either of the two Arbitrators named therein as sole Arbitrator and calling upon the respondent to give consent to the same.

3. The respondent, however, did not respond to this letter.

4. It is in the aforesaid situation that the petitioner has filed the present application under Section 11(5) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the said Act').

5. The application is sought to be contested by the respondent.

The pleas raised in defence are as under:-

- i) The claim is barred by time as the premises were vacated on 22.01.2009.
 - ii) The notice dated 12.12.2011 was not in terms of clause 17 of the Lease-Deed as unilaterally two names were suggested without calling upon the respondent to give its consent.
 - iii) That the fabricated documents are sought to be created to support the case.
 - iv) That the application should only be maintainable only under section 11(6) of the said Act and not under section 11(5) of the said Act.
6. On hearing learned counsels for the parties, I find no merit in the aforesaid contentions. The notice of arbitration was quite clear and in terms of the Arbitration Clause. The consent to an Arbitrator can only be obtained if someone is proposed and accepted as an Arbitrator. The petitioner proposed two persons as alternate Arbitrators and the respondent failed to respond to the same. Thus, the result is that there is no agreement or

consent for appointment of a particular Arbitrator, necessitating filing of the present application.

7. In so far as the plea of limitation or documents which are alleged to be fabricated are concerned, in my view, these questions cannot be determined in the present proceedings without adducing evidence in view of there being allegations and counter allegations. This issue is thus best left to be determined by the Arbitrator.

8. As far as the last aspect under what provision of the Arbitration Act, the application ought to have been filed, the mere fact of mention of sub section 5 instead of sub section 6 of section 11 of the said Act will not make an application liable to be rejected. This is at best a procedural or typographical error and the Court could not be constrained not to appoint an Arbitrator on this count.

9. Learned counsels for the parties at this stage proposed that the arbitration be held under the aegis of Delhi High Court Arbitration Centre.

10. Accordingly, I appoint Mr. S.K.Tandon, retired District & Sessions Judge, Delhi, (# 244, Bank Enclave, near Laxmi Nagar, Delhi, M.No. 9811719888) as sole Arbitrator to enter upon the reference and adjudicate the disputes *inter-se* the parties. The arbitration will be held under the aegis of Delhi High Court Arbitration Centre. The arbitration fee and expenses will be according to the schedule of the Centre.

Petition accordingly stands allowed.

A copy of the order be sent to the Delhi High Court Arbitration Centre as well as to the appointed Arbitrator.

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

28.03.2014

'ravinder'