

(2010) 10 P&H CK 0034
In the Punjab And Haryana At Chandigarh

Prem Chand Mehta and Others	Vs	APPELLANT
ICICI Prudential Life Insurance Co. Ltd. and Others		RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2010) 10 P&H CK 0034

Hon'ble Judges : Mukul Mudgal, C.J

Bench : Single Bench

Judgement

Mukul Mudgal, C.J.

CM No. 21692-CII of 2010

Heard. For the reasons mentioned in the application, the same is allowed. Applicants as mentioned in para No. 3 of the application are ordered to be impleaded as legal heirs of petitioner No. 1 in place of deceased petitioner, namely, Prem Chand Mehta. Cause title shall be amended accordingly. C.M. stands disposed of.

CM No. 22326-CII of 2010

Heard. Reply enclosed with the application is taken on record and CM disposed of.

1. This petition has been filed by the petitioners u/s 11 of the Arbitration & Conciliation Act, 1996 (for short " the Act), for appointment of the Arbitrator to adjudicate upon the disputes between the parties.

2. Clause 47 of the agreement contains the Arbitration clause which reads as under:

Any dispute arising howsoever in connection with the interpretation or implementation or purported termination of this agreement, the parties shall attempt in the first instance to resolve such dispute by friendly consultations. If such dispute is not resolved through friendly consultations within 30 days after

commencement of the discussions or such longer period as the parties agree to in writing then any part may refer the dispute for resolution by Arbitration. All such disputes shall be referred to and finally resolved by arbitration by a sole Arbitrator to be appointed jointly by the parties. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be English. The place of the arbitration shall be Patiala. The arbitration award shall be final and binding on the parties and the parties agree to be bound thereby and to act accordingly. The Arbitrator may (but shall not be required to) award to the party that substantially prevails on merits. Its costs and reasonable expenses (including legal costs) when any dispute is under arbitration, except for the matters under dispute, the parties shall continue to exercise their remaining rights and fulfill their remaining respective obligations under this agreement to the extent practicable.

3. Upon notice, the respondents have put in appearance and filed their reply. The existence of dispute as well as receipt of letter invoking the arbitration clause have not been disputed in the written statement.

4. Learned Counsel for the respondents at the first instance has contended that before invoking the arbitration clause, the petitioners did not resort to the procedure laid down to resolve the dispute by friendly consultations. To controvert this plea, Learned Counsel for the petitioners has referred to paragraph No. 3 of their legal notice dated 16.10.2008 sent to the respondents which reads thus:

3. That my client submitted number of letters as well as the legal notice and also approached for reconciliation about the release of the arrears but the same has not been released so you are directed to refer the dispute to the arbitrator and my client proposed the name of Mr. Rajiv Nirola son of Shri K.C. Nirola, 21, Yadvindra Colony, Patiala, as Arbitrator.

5. A perusal of Paragraph No. 3 of the above letter clearly demonstrates that the attempts to resolve the dispute by way of friendly consultations were made by the petitioners but failed resulting into the fact that the dispute between the parties is pending for a long time.

6. The other argument raised by learned Counsel for the respondents is that the lease agreement was never acted upon. This plea of Learned Counsel for the respondents is also not tenable in view of the respondents own letter dated 31.3.2008 sent to the petitioners which reads thus:

We wish to bring to your kind attention that we have decided to terminate the agreement as per Clause 24 of the agreement. Therefore consider this letter as advance 3 months notice for termination. No further intimation regarding termination will be given by the company.

7. A perusal of the aforesaid letter itself shows that the respondents themselves had acted upon the agreement which they sought to terminate as per Clause 24

thereof.

8. Lastly, the Learned Counsel for the respondents contended that possession of the disputed property was never handed to them. This plea in my view is a dispute which cannot be gone into while exercising powers u/s 11 of the Act but is adjudicated by the Arbitrator.

9. Accordingly, this petition is allowed and Shri K.R. Mahajan, District & Sessions Judge (Retd.) is appointed as sole Arbitrator to adjudicate upon the disputes between the parties. In the meanwhile, the parties will exchange the statements of claims and response thereof. The statements of claims be supplied to Counsel for the respondents within four weeks and response to the statements of claims shall be supplied to the Counsel for the petitioners within four weeks thereafter. The parties shall appear before the Arbitrator on 24.12.2010 at 4.00 P.M. or on an agreed date convenient to the parties but not later than a fortnight from the date of exchange of pleadings as directed aforesaid. The Arbitrator shall dispose of the reference not later than six months from the date of first appearance of the parties. The fee of the Arbitrator is fixed as Rs. 60000/(Rs. Sixty thousand only) as lump sum. The actual expenses incurred by the Arbitrator as well as his fee, as determined by this Court, shall be borne by both the parties in equal proportion.

With these directions, this petition stands disposed of.