**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2012-04258**

**BETWEEN**

**SATYANAN SHARMA**
**CHANDRICA SHARMA**

**Claimants**

**AND**

**CHRISTIANA ADIT**
**VASHTI MOHAMMED**

**Defendants**

**Before The Hon. Madam Justice C. Gobin**
**Appearances:**

**Mr. S. Saunders for the Claimants**
**Mr. A. Manwah for the Defendants**

**JUDGMENT**

1. The claimants are tenants and the defendants, landlords, who entered into a written agreement dated April 12th 2012 for the lease of the lower floor of premises situate at No.79 Edinburg Village, Chaguanas for a period of 35 months at a rent of $2,500.00 per month.

2. Clause 5 (3) of the agreement contained an arbitration clause in the following terms:

> PROVIDED ALWAYS and it is hereby agreed as follows:-
>
> If any question difference or dispute shall arise between the parties hereto or any person or corporation claiming under them respectively concerning or touching the construction of any clause herein contained or the rights duties or liabilities of

> the parties hereto or in any other way touching or arising out of this lease the same shall be referred to the determination of a single arbitrator if the parties can agree to one or otherwise to two arbitrators one to be appointed by each party or of an umpire to be appointed by such arbitrator before proceeding in the reference in accordance with the Arbitration Ordinance Ch.7 No.1 or any statutory re-enactment or modification thereof for the time being in force.

3. The claimants filed this claim seeking damages for breach of the covenant of quiet enjoyment, for damages for nuisance and several injunctions. On October 17th 2012 an interim order was granted, without a hearing, restraining the defendants inter alia fron interfering with the claimants, harassing or molesting them, preventing the claimants and their clients from parking in the yard of the demised premises.

4. The defendants now apply to have these proceedings stayed for a period of six months pursuant to S.7 of the Arbitration Act. An affidavit filed by the defendants in support of this application includes this statement

> "Both myself and the 2nd defendant have always been ready and willing to do all that is required and necessary for the determination of these questions, disputes and differences via abitration".

5. It is well established that whether or not the Court exercises its power to stay the proceedings is entirely a matter of discretion (Russel on Arbitration 18th Edn p.154). The burden is on the claimants to show cause why effect should not be given to the agreement to submit to arbitration, and on the defendants to show they

were ready and willing to do everything necessary for the proper conduct of the arbitration. Having read the submissions on both sides I find that the claimants have satisfied me that I should refuse this application.

6. I accept the submission that by their conduct the defendants, the bold statement contained in the affidavit referred to above notwithstanding, have not demonstrated that at the time of the commencement of the proceedings they were ready and willing to do everything necessary for the conduct of the arbitration.

7. I accept that the aspects of conduct identified in the claimants' submissions clearly indicate an unwillingness to go to arbitration. Specifically the claimants have properly in my opinion, distinguished the authority of **Civ. App No. 201 of 1998 Trinidad and Tobago National Petroleum Marketing Co. Ltd and Praman Suresh Maharaj trading as P.S. Maharaj Service Station** relied upon by the defendant. In that case the Court of Appeal found that the mere issue of a notice to quit by a party was not sufficient to persuade the Court to refuse a stay. In this particular case the addendum to the standard notice to quit contained the following words:

> **"AND FURTHER TAKE NOTICE** that you are not entitled to remove any fixtures from the aforementioned property on delivery of possession to Christina Audit and your failure to comply is auctionable and High Court proceedings will be commenced against you for damage".

This was the clearest indication that the defendants were considering litigation, not arbitration as the next step after the issuance of the notice to quit.

8. Further the failure of the defendants to respond (and there is no evidence that they did) to the claimant's pre-action letter to indicate their willingness or readiness to invoke the arbitration clause is significant. Had they been so ready and willing I would have expected a response to that effect. What puts it beyond doubt that the defendants were not so ready or willing is the institution of summary proceedings in the Chaguanas Magistrates Court for possession of the premises, almost four weeks after the pre-action letter was sent.

9. Finally, it seems to me that since this is an action which includes claims for injunctive relief, and having regard to the nature of the allegations made by the claimants, of interference with the quiet enjoyment of the demised premises, the main and necessary reliefs claimed would be wholly beyond the powers of an arbitrator.

10. The lease in question has an unexpired term of approximately two years. It seems to me that the exparte orders which have already been granted require continued supervision by the Court for the protection of the claimants, for enforcement if necessary, and indeed for the defendants who ought not to be deprived of access to the Court in the event that there are proper grounds for the discharge of the very orders which were granted exparte against them.

11. The mere fact that an arbitrator cannot grant injunctive relief is not generally a sufficient reason to refuse a stay. But the circumstances of this case justify the refusal for the very reason. The following passage from the judgment of Lord Selbourne LC in the case of **Willesford v Watson 1873**. ***Willesford v Watson LR Ch. App. 473 @ 480*** indicates the position.

> Then, with regard to the other two points, it is said that the arbitrator could not grant an injunction. No doubt he could not grant an injunction; but he might say that the thing was not to be done, and there being liberty to apply to this Court, this Court would then grant the injunction. I agree that if, in the present state of circumstances, the Court saw there was a case for now granting the injunction, that would be an extremely good reason for not sending the matter to arbitration. But nothing has been said to us which has any tendency whatever to make us think that, in the present state of circumstances, there is a case for now granting an injunction.

12. The instant case began with an application for injunctive relief which was granted on the basis of the evidence presented. In the circumstances, that amounts to sufficient reason to refuse sending the matter to arbitration.

13. The defendants application is dismissed with costs assessed in the sum of $7,500.00.

**Dated this 8th day of February 2013**

**CAROL GOBIN**

**JUDGE**