

IN THE HIGH COURT OF DELHI AT NEW DELHI

**ARB.P.335/2006 & I.A. Nos.7818, 11180/2006,
3692-3693, 6512/2009, 7301 & 16738/2011**

Reserved on: January 12, 2012

Decision on: February 8, 2012

COGENT VENTURES (INDIA) LTD.

..... Petitioner

Through: Mr. Tanmay Mehta with Mr. Sumit
Attri and Mr. Animesh Rastogi,
Advocates.

versus

RAJ KARAN [THROUGH LRs]

..... Respondent

Through: Mr. Ashok K. Chhabra with
Mr. Suryajyoti Singh Paul, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

8.02.2012

1. Arbitration Petition No. 335 of 2006 under Section 11(6) of the Arbitration & Conciliation Act, 1996 ('Act') has been filed by Cogent Venture (India) Ltd. ('CVIL') praying that this Court should appoint an Arbitrator to decide the disputes between CVIL and the Respondent (late) Shri Raj Karan, arising out of an Agreement dated 17th November 2003 between the parties. The petition has been filed through Shri A.D. Bhargava, claiming that he has been authorized by a Board Resolution dated 5th July 2006 to pursue this litigation on behalf of CVIL.

2. The Respondent expired during the pendency of the present petition on 25th September 2009. By an order dated 11th December 2009 in I.A.14956 of 2009, the LRs of the deceased Respondent have been brought on record in his place.

Case of the Petitioner

3. The deceased Respondent Raj Karan was the owner of a property bearing Khasra No.810/2 measuring 2200 sq. yds. at Chhatarpur Extension, New Delhi (hereafter referred to as 'the land in question'). The Petitioner entered into an agreement dated 14th August 2003 with the Respondent whereby the land in question was leased out to the Petitioner by the deceased Respondent for a period of three years at a rent of Rs.51,000 per month. The possession of the land in question was handed over to the Petitioner. It is claimed by the Petitioner that when the land was handed over to it, there was a construction comprising three bed rooms, one kitchen, one drawing-cum-dinning, four bathrooms and one servant quarter "as a body structure" on the ground floor and was depicted in the schedule to the said agreement.

4. The Petitioner claims that thereafter the Respondent expressed his intention to sell the property to the Petitioner and after negotiations a Memorandum of Understanding ('MoU') dated 17th November 2003 was signed between the Petitioner and the deceased Respondent Raj Karan. It is claimed that by the said MoU it was agreed that the Respondent would sell the land to the Petitioner for a total consideration of Rs.50 lakhs and that in order to effect the sale transaction, the Respondent would obtain a No Objection Certificate ('NOC') for registration of the sale deed from the office of the concerned Tehsildar in Delhi. The Petitioner states that it was further agreed between the parties that the sale deed would be executed in favour of Mrs. Pushpa Bagla and Mr. Bhupendra Bagla, Directors of CIVIL for an agreed sale consideration of Rs.50 lakhs to be paid at the time of execution and registration of the sale deed after adjusting the amount, if any, paid subsequent to 15th February 2004. It is further claimed that by the MoU the land in question was deemed to be vested in Mrs. Pushpa Bagla and Mr. Bhupendra Bagla. By the said MoU, the deceased Respondent also allowed the Petitioner to avail of loan facility for the arrangement of consideration.

The Petitioner claims that the MoU permitted the Petitioner to commence the work of reconstruction and refurbishing of the land in question.

5. It is stated that after the MoU dated 17th November 2003, the Petitioner handed over the possession of the land in question to its Directors, Mrs. Pushpa Bagla and Mr. Bhupendra Bagla in whose favour the sale deed was to be executed and construction on the land in question commenced. The Petitioner states that an agreement dated 10th January 2004 was entered into with the Directors of Excel Castings Pvt. Ltd. to carry out construction on the land in question. The Petitioner claims to have invested a sum of Rs.2 crores towards construction, modification, alteration, furnishings etc. A new building on the first floor in the area of 4775 sq. ft. was also constructed. A second floor was constructed comprising one bed room with attached toilet etc. It is stated that in relation to the Agreement dated 10th January 2004, disputes arose between the Petitioner and the contractor. The contractor approached this Court and obtained a stay. The Petitioner claims to have followed up with the deceased Respondent, the question of execution of the sale deed pursuant to the MoU dated 17th November 2003. It obtained an NOC in August 2004 and thereafter requested the deceased Respondent to provide all relevant linked documents so that the draft sale deed could be finalized. It is claimed that the deceased Respondent, however, did not supply the said documents. In the meanwhile, the purpose for which the NOC was obtained expired. With the deceased Respondent not coming forward for executing the sale deed, the Petitioner got a notice dated 11th March 2006 issued asking the Respondent to give his consent for the appointment of an Arbitrator. The Petitioner states that it also entered “into the deal with respect to the subject matter of the property with the Respondent/non-applicant through Shri Sukdev Tomer, Vasant Kunj, New Delhi.” The Petitioner claims to have paid property tax on the building till 2005-2006. The Petitioner claims to have learnt that the Respondent was

looking for other buyers to dispose of the land in question. Thereafter the present petition has been filed seeking the reliefs mentioned hereinbefore.

Proceedings in this court

6. Notice in the present petition was issued on 19th July 2006 and this Court restrained the Respondent from disposing of, selling, parting or creating third party interest in the land in question. The interim injunction has continued since.

7. The Respondent filed I.A.11179 of 2006 for a direction to the Petitioner to place on record the original documents and I.A.11180 of 2006 for impounding the photocopy of the lease deed dated 14th August, 2003. By an order dated 16th October 2006, I.A.11179 of 2006 was allowed and the Petitioner was directed to file the original documents within two weeks. Notice was directed to issue in I.A.11180 of 2006 with time to the non-applicant, i.e., the Petitioner, to file a reply.

8. On 17th July 2007 this Court passed the following order:

“ I.A. No. 11180/2006 in Arb. P. No. 335/2006

Learned counsel for the petitioner has submitted that on account of bona fide oversight, the filing of the reply to this application has not taken place. Let reply be filed within four weeks. Rejoinder thereto, if any, be filed before the next date of hearing.

Arb. P. No. 335/2006

Learned counsel for the parties are permitted to file all original documents relied upon by them in support of their respective contentions on or before the 3rd of August, 2007.

The matter shall be listed for admission and denial of documents before the Joint Registrar on 6th August, 2007

and before this court for further directions on 13th November, 2007.

Learned counsel for the petitioner submits that he would also consider the objections taken by the respondent to the aspect of non-stamping of the agreements in question and in case he finds force in the legal submissions made by the respondent, he may be permitted to mention I.A. No. 11180/2006 before the Joint Registrar who may then place it on an earlier date for appropriate orders.

Liberty as prayed for is granted to learned counsel for the parties.”

9. The Joint Registrar passed the following order on 6th August 2007:

“ARB.P.335/2006

It is submitted that there is some compromise talk between the parties to settle dispute and an adjournment of two weeks is sought for proceedings for admission denial of documents. Adjournment granted.

Matter be listed on 14.09.2007 to take up admission denial of the documents.”

10. Meanwhile, I.A. 10602 of 2007 was filed by the Delhi Police for a direction to the Petitioner to produce the original MoU dated 17th November 2003. By order dated 13th November 2007, the Petitioner was granted four weeks’ time to reply to the said application. On 3rd March 2008 the following order was passed by this Court:

“IA No.10602/2007 (by Delhi Police)

This application is preferred by the Delhi Police praying inter alia for being handed over in sealed cover, the original Memorandum of Understanding dated 17.11.2003 filed by the petitioner, for forwarding the same to the Investigating Agency, to establish the genuineness of the signatures of the respondent

thereon for the purposes of conducting investigations in FIR No.100/2007 dated 3.2.2007, registered by the respondent against the Director of the petitioner herein. Counsel for the petitioner states that he has no objection to the document in question being forwarded to the CFSL but he expresses an apprehension on the part of the petitioner that as the son-in-law of the respondent is a serving Senior Police Officer, he may not influence the investigation, if the document is sent to the Delhi Branch of the CFSL. Counsel for the respondent states that the respondent has no objection to the aforesaid document being sent for verification to an agency outside Delhi. Accordingly, it is directed that the original Memorandum of Understanding dated 17.11.2003, be forwarded to the GEQD, Hyderabad for obtaining an expert opinion as to the genuineness of the signatures of the respondents thereon. To enable the GEQD to give expert opinion, it is necessary for the respondent to furnish his admitted signatures. The respondent shall appear before the Joint Registrar on 13.3.2008, on which date, he shall furnish his signatures on a blank sheet of paper as per the prescribed procedure, in the presence of the petitioner, which shall also be enclosed with the Memorandum of Understanding dated 17.11.2003, and forwarded by the Registry to the GEQD, Hyderabad in a sealed cover for obtaining an opinion as to the genuineness of the signatures of the respondent, on the Memorandum of Understanding. The opinion shall be furnished by the GEQD, Hyderabad within four weeks from the date of receipt of the documents.

The application stands disposed of.

AA No. 335/2006

List on 20.5.2008, in the category of 'Directions' to await the report from the GEQD, Hyderabad."

11. On 13th March 2008, the Joint Registrar passed the following order:

"ARB.P.335/2006

Respondent Mr. Raj Karan Solanki is present. His specimen signatures have been obtained on a blank paper

in presence of the counsel of the petitioner. As per the order of the Hon'ble Court, the said signatures be enclosed with the Memorandum of Understanding dated 17.11.2003 and the same be forwarded by the Registry to the GEQD, Hyderabad in a sealed cover for obtaining an opinion as to the genuineness of the signatures of the respondent, on the Memorandum of Understanding. The GEQD, Hyderabad will give opinion within four weeks after the receipt of the documents.

Matter be listed on 7.5.2008 for further hearing.”

12. In its order dated 20th May 2008, this Court recorded that the report from the GEQD, Hyderabad had been received in a sealed cover. It was directed that it should lie in the custody of the Registrar General of this Court.

13. On 15th May, 2009, the following order was passed:-

“I.A. Nos. 6512 of 2009

The report from GEQD was received pertaining to comparison of the signatures of the non applicant with his specimen signatures taken in Court. This report is lying in a sealed cover. I find no reason for keeping the report in a sealed cover. Let the report be placed on record in a non-sealed manner so that parties can inspect the same.

The report lying with Registrar General in a sealed cover shall be opened by the Registry and be placed on record forthwith. This application for appointment of Arbitrator was made on the basis of an MOU allegedly signed by respondent. However, respondent denied his signatures on the same. This Court had earlier ordered for comparison of the signatures of the respondent/non applicant with the signatures on MOU. At that time, the Court ordered that the respondent should be asked to give his specimen signatures and the specimen signatures given by respondent were sent to GEQD for comparison with the signatures on the MOU. The necessity of giving specimen signatures arises only when admitted signatures of the party are not available on the admitted document. The disputed signatures of a party are required to

be compared with the admitted signatures as available, of the period contemporary to the documents, on those documents which are not disputed documents. That is the only proper method of comparison of the disputed signatures with admitted signatures. If the disputed signatures are compared with the specimen signatures obtained after the person is made to know that his disputed signatures are to be compared, the person has a chance to vary his specimen signatures. I, therefore, consider that the value of the report showing comparison of disputed signatures with specimen signatures has to be considered by the Court. In the meantime, applicant has made an application for placing the admitted documents having admitted signatures by the non applicant on record. Let the reply of this application be filed within six weeks. Rejoinder thereto, if any, be filed four weeks thereafter.

List this matter now on 22nd September 2009.”

14. An appeal FAO (OS) No. 297 of 2009 was filed by the Respondent against the aforementioned order. On 11th December 2009, the legal representatives of the deceased Respondent were brought on record. On 25th February 2010 the present petition was adjourned *sine die* to await the decision of the Division Bench in FAO (OS) No. 297 of 2009 with liberty to the parties to revive the petition after the decision in the said appeal. FAO (OS) No. 297 of 2009 was dismissed as withdrawn by the Division Bench on 24th February 2011 permitting both parties to raise all defences against the Report of the GEQD, Hyderabad at the stage of final hearing of the present petition. Thereafter I.A. 7301 of 2011 filed by the Respondents for revival of the present petition was allowed on 28th July 2011.

15. Meanwhile, the Petitioner filed I.A.16738 of 2011 seeking the amendment of the cause title stating that the name of CVIL had changed to M/s. CVIL Infra Ltd. A certificate issued by the Registrar of Companies, Mumbai on 11th November 2009 permitting the change of name was enclosed.

16. To complete the narration it must be noted that the deceased Respondent filed CS (OS) No. 1987 of 2006 in this Court against the Petitioner seeking, *inter alia*, possession of the land in question as well as *mesne* profits. By an order dated 24th April 2011 this Court partly decreed the suit under Order XII Rule 6 CPC insofar as the relief of possession was concerned but further directed that the decree would not be executed till the decision in the present petition. There have also been criminal proceedings initiated against CVIL and its directors in FIR No. 100 of 2007 for, *inter alia*, the offence of forgery. The petition filed by them under Section 482 Cr PC seeking the quashing of the said case has been dismissed by this court. There are other criminal cases filed against Mr. Santosh Kumar Bagla and his relatives in relation to other transactions in Delhi, Nainital, Dehradun and Kolkata. Details of these cases have been placed on record by the Respondents on 17th October 2011.

Submissions of Counsel

17. This Court has heard the submissions of Mr. Tanmay Mehta, learned counsel for the Petitioner and Mr. Ashok Chhabra, learned counsel for the Respondent.

18. Mr. Mehta first pointed out that in the order dated 15th May 2009 this Court noted that taking ‘specimen’ signatures of the deceased Respondent, when his admitted signatures were available on the record, was improper and, therefore, the GEQD Report, which recorded that the signatures on the disputed documents were different from the specimen signatures of the Respondent, could not be given any weight whatsoever. In other words, no comparison ought to be made of the specimen signature given by the deceased Respondent Raj Karan with his purported signatures on the MoU dated 17th November 2003. Reliance was placed on decisions in ***Bisseswar v. Nabadwip Chandra AIR 1961 Cal 300, Ajithkumar v. Rejinkumar AIR***

2010 (NOC) 908 (Ker) and **Chandramohan v. Pushp** (order dated 24th February 2011 of the High Court of Madras in SA No. 45 of 2011).

19. Mr. Mehta next submitted that once the GEQD Report was found unreliable, the other recourse was either to seek an expert opinion or for the Court to undertake the comparison itself. However rule of prudence would require the Court to seek expert opinion. Reliance was placed on the decisions in **State (Delhi Admn.) v. Pali Ram AIR 1979 SC 14** and **O. Bharathan v. K. Sudhakaran (1996) 2 SCC 704**.

20. Mr. Mehta submitted a compilation containing copies of the signatures of the deceased Respondent on the lease deed dated 14th August 2003, the MoU dated 17th November 2003, the complaint filed by the deceased Respondent with the Economic Offences Wing ('EOW') on 29th September 2006, his signatures on the reply/written statement filed in the present petition on 3rd October 2006, his signatures on the application filed on 3rd October 2006, his signatures in the suit CS (OS) No.1987 of 2006 on 6th October 2006, his signature in the criminal complaint No.1700/1 filed on 20th December 2006, his signature on the *vakalatnama* filed in the Court of the learned ACMM, New Delhi, his signatures in the reply filed under Section 8 in CS (OS) No.1987 of 2006, his signature on the reply dated 3rd April 2007 in CCP No.162 of 2006, his signatures on the application dated 13th April 2007 in Crl.M.C. No.895 of 2007, as well as the specimen signatures of Raj Karan taken in Court on 3rd March 2008. According to Mr. Mehta, a comparison of these signatures showed that the signatures of late Raj Karan widely differed from each other. It was, therefore, necessary that "the admitted signatures on various documents such like bank account, passport, income tax, MCD, Tehsildar etc. be obtained and the same be compared with the disputed signatures to arrive at the just and proper conclusion on the issues involved in the matter in the interest of justice." It

is submitted by Mr. Mehta that without the above exercise being undertaken, any order passed that was adverse to the Petitioner would cause it great prejudice. It had, with the consent of the deceased Respondent, invested Rs. 3 crores on the further construction on the land in question. It now had a built up area of 70000 sq. ft. as compared to the initial 3000 sq. ft in 2003.

21. Lastly it was contended that the proceedings under Section 11 of the Act were summary in nature. It is submitted that a finding given in these proceedings as to the genuineness of the signatures of the Respondent which might be adverse to the Petitioner would foreclose and prejudice its rights vis-à-vis the MoU dated 17th November 2003. This question was therefore required to be decided in arbitral proceedings where parties would be able to lead evidence and cross-examine witnesses. Reliance is placed on the decision in ***Sunder Kukreja v. Mohan Lal Kukreja, (2009) 4 SCC 585.***

22. Countering the above submission, Mr. Ashok Chhabra, learned Counsel for the Respondents submitted that the report of the GEQD, Hyderabad, categorically said that “the questioned signature with mark Q-1 to Q-6 are traced imitations which were not written by the writer of the specimen signatures marked S-1”. It is submitted that the original of the MoU had on the reverse of the first page the date mentioned as 2nd June 2003. On that date the Respondent had no connection whatsoever with the Petitioner. The land in question was leased by a deed dated 14th August 2003. The stamp vendor’s seal on the reverse of the first page of the MoU did not have any clear name and no purpose was mentioned. This could be contrasted with the photocopy of the lease deed dated 14th August 2003 filed with the written synopsis which would show that the stamps of the stamp vendor on the back of the stamp paper specifically mentioned the purpose for which the stamp paper was purchased. The language used on page 3 of the MoU was also vague. It only mentioned that Rs. 51,000 shall be continued to be paid and

the amount so paid subsequent to February 2004 shall be adjusted in the agreed total consideration. The covering letters of CVIL enclosing the payments between February 2004 and January 2006 only mentioned the cheque being sent therewith for payment and made no reference to the MoU. The Petitioner made no mention of the MoU in the correspondence exchanged with the deceased Respondent. No proof of delivery of any of the letters to the Respondent had been placed on record by the Petitioner.

23. Mr. Chhabra further pointed out that the witnesses shown on the last page of the MoU were Sanjay Bakshi and Binod Kumar. The former was a Director of the Petitioner and the latter was an officer working with the Petitioner. Further, in FIR No.100 of 2007 ordered to be registered by the criminal court, Santosh Kumar Bagla, Pushpa Bagla, Bhupendra Bagla, Sanjay Kumar and Binod Kumar were all shown as accused. In the order dated 24th October 2009 of the District Judge, Rohini dismissing anticipatory bail application filed by Santosh Kumar Bagla, it was observed that pages 67 and 68 of the MoU appeared *prima facie* to be forged by the applicant with the intention to cheat and deprive the claimant of his immovable property. The petition filed under Section 482 of the Cr PC. for quashing of the FIR was dismissed by this Court. Meanwhile, Sanjay Bakshi filed a petition in the High Court of Andhra Pradesh. He filed an affidavit stating that he was neither a Director of CVIL nor had any connection with the MoU. However, he filed an affidavit in this Court in a caveat petition and issued a cheque on behalf of the Petitioner which showed that he was a Director of the Petitioner.

24. Mr. Chhabra pointed out that even a cursory comparison of the purported (disputed) signatures of the deceased Respondent on the MoU with his admitted signatures in the contemporaneous documents as depicted in the compilation filed by the Petitioner would reveal that the signatures of the

deceased Respondent on the MoU were forged. It is submitted that if the arbitration agreement is itself *prima facie* a forged document, this Court should reject outright the petition under Section 11 of the Act.

The disputed signatures in the MoU

25. The issue that has to be decided is whether the Petitioner has been able to *prima facie* satisfy this Court of the existence of an arbitration agreement between the parties. The arbitration clause which is invoked by the Petitioner is Clause 11 of the MoU dated 17th November 2003 which is Annexure A-3 to the petition. It is the signatures of the deceased Respondent on this document that were disputed. The purported original of this document has been filed in this Court. Specimen signatures of the deceased Respondent were taken in this Court on 3rd March 2008 and sent for comparison with the disputed signatures to the GEQD, Hyderabad. The certificate of the NABH Accredited Laboratory in the office of the GEQD at Hyderabad has given its opinion that “the questioned signatures mark Q-1 to Q-6 are traced imitations which were not written by the writer of the specimen signatures marked S-1.”

26. For the purpose of the present petition under Section 11, this Court is not called upon to undertake an elaborate exercise of determining whether the signatures on the MoU are in fact forged and fabricated and if so, who is responsible for it. As pointed out by the learned counsel for the Petitioner, that would require a full-fledged trial. The present proceedings under Section 11 of the Act are of a summary nature. Although in the order dated 15th May 2009 this Court observed that the proper method of comparison of the disputed signatures had to be with “admitted signatures” and not “specimen signatures”, the fact remains that the admitted’ signatures of the deceased Respondent contemporaneous with the time of the ‘disputed’ signatures are available and have been placed on record by the Petitioner

itself. The signatures on the lease deed dated 14th August 2003 would definitely qualify as ‘admitted signatures’ as it is only three months prior to the MoU and neither party disputes that document.

27. The question concerning the evidentiary value of the opinion of a handwriting expert in the context of Sections 45, 47 and 73 of the Evidence Act, 1872 has been considered in a number of decisions of the Supreme Court. In ***Fakhruddin v. State of Madhya Pradesh, AIR 1967 SC 1326*** it was observed as under:

“10. Evidence of the identity of handwriting receives treatment in three sections of the Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (Section 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (Section 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

11. Both under Section 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed ones, not to become a handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved

writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. **Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.**" (Emphasis supplied)

28. Later in *State (Delhi Admn.) v. Pali Ram*, AIR 1979 SC 14, it was observed:

"32. Since even where proof of handwriting which is in nature comparison, exists, a duty is cast on the Court to use its own eyes and mind to compare, the admitted writing with the disputed one to verify and reach its own conclusion, it will not be wrong to say that when a Court seised of a case, directs an accused person present before it to write down a sample writing, such direction in the ultimate analysis, "is for the purpose of enabling the Court to compare" the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73. That is to say, the words 'for the purpose of enabling the Court to compare' do not exclude the use of such "admitted" or sample writing for comparison with the alleged writing of the accused, by a handwriting expert cited as a witness by any of the parties. Even where no such expert witness is cited or examined by either party, the Court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the Court to compare the two writings and arrive at a proper conclusion." (Emphasis supplied)

29. Thus, it would appear that even where expert evidence is available, the Court is expected to itself compare the two writings to arrive at a proper

conclusion. In such circumstances, there is no bar to a Court undertaking a visual comparison of signatures.

30. A cursory visual comparison of the 'disputed' signatures of the deceased Respondent on the MoU dated 17th November 2003 with the signatures on the lease deed dated 14th August 2003, three months prior to the purported MoU, shows significant marked differences. The essential feature of the signature which is the opening letter 'R' is very different in the disputed signature in the MoU. The same letter in the 'admitted' signature in the lease agreement is very different. It bears closer resemblance to the one found in the signatures in the documents other than the MoU but at a later point in time. This much is apparent even without the report of examination by a handwriting expert. Thus even by adopting the recommended test of comparison of disputed signatures with contemporaneous 'admitted signatures' and not later specimen signatures, the disputed signatures of the deceased Respondent on the MoU dated 17th November 2003 *prima facie* appear markedly different from his admitted signatures on the lease deed dated 14th August 2003.

31. Therefore, a credible doubt as to the genuineness of the MoU dated 17th November 2003 has been established. It is unsafe to act on the said document for the purposes of the present petition under Section 11 of the Act. This Court is accordingly not inclined to entertain the prayer in the present petition for appointment of an arbitrator on the basis of the said MoU dated 17th November 2003.

32. Although in ***Sunder Kukreja v. Mohan Lal Kukreja***, on the facts of that case, the Supreme Court was of the view that the question regarding the genuineness of a document could be decided by the Arbitrator, there are decisions of the Supreme Court which hold that where there are disputed

questions concerning forgery and fabrication of documents, reference to arbitration is not appropriate. [See ***India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd. (2007) 5 SCC 510*** and ***Vijay Vishwanath Talwar v. Mashreq Bank, PSC, 109 (2004) DLT 838***].

Other Applications

33. The application by the Petitioner for placing on record additional documents need not be considered in view of the above decision of the Court. As regards the application seeking amendment of the cause title to reflect the changed name of the Petitioner as CVIL Infra Limited, the Respondent has raised serious objections by pointing out that even after the purported change of name, affidavits and documents have been filed by the Petitioner in different courts under the name of CVIL. Since in any event the petition is rejected on merits, this Court does not consider it necessary to decide this application as well.

Clarification and Conclusion

34. It is however clarified that this Court has only expressed a prima facie view concerning the MoU dated 17th November 2003 limited to the present petition under Section 11 of the Act. This is not intended to influence other proceedings where such question may be involved.

35. The petition is dismissed and the applications are disposed of in the above terms with costs of Rs. 10,000 which will be paid by the Petitioner to the Respondents within four weeks.

S. MURALIDHAR, J.

February 8, 2012

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