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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 299/2012**

HARBHAJAN SINGH CHOPRA AND ANR Plaintiffs

Through: **Mr. Pranav Jain, Advocate.**

versus

M/S FOUNTAINHEAD MOTELS PVT LTD & ORS Defendants

Through: **Ms. Manmeet Arora, Adv.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **08.03.2016**

O.A.No.160/2014 (against order dated 26.7.2014)

1. This O.A No. 160/2014 is filed by the plaintiffs against the order of the Joint Registrar dated 26.7.2014 dismissing the I.A.No.10543/2013 filed by the plaintiffs under Order 7 Rule 14 CPC. By the application, plaintiffs want to put on record a transcript of conversation which is recorded in a mobile phone alongwith a certificate under Section 65-B of the Evidence Act as also an affidavit of one Ms.Lakhbir Gurtata.

2. I may note that issues in the suit were framed on 6.9.2013 and the present application was filed earlier in July, 2013 i.e before framing of issues. As per Order 13 CPC parties have a right to file original documents

in their power and possession before the issues are framed, and therefore, technically this application filed before framing of issues has to be taken for disposal as on the date of filing of the same.

3. Learned counsel for the defendants, in my opinion, however rightly argues that there are issues with respect to authenticity not only of the transcript which is sought to be brought on record, but also legal validity of the certificate purported to be filed under Section 65-B of the Evidence Act, and also as to whether the affidavit of Ms. Lakhbir Gurtata can be legally at all considered, inasmuch as, there are discrepancies in the documents filed by the plaintiffs with respect to the conversation being of 30.11.2012 or 1.12.2012 and finally as to whether the affidavit of Ms.Lakhbir Gurtata can at all be looked into in law because the affidavit is not of the owner of the mobile phone in which the conversation was recorded.

It is however conceded that all these issues which are raised on behalf of the defendants would be issues of either forgery or fabrication of the documents being the transcript or the lack of authenticity of the same for any reason whatsoever, or that even if the document exists, since however

the same does not comply with the requirement of Order 65-B of the Evidence Act, hence the same cannot be looked into or there is existence of other defences which will prohibit looking into of the documents sought to be filed in terms of the list of the witnesses dated 5.7.2013 be it the interim stage or at the stage when the documents are sought to be proved at the time of recording of evidence.

4. At this stage therefore it is agreed that though the documents filed by the plaintiffs under their list of documents dated 5.7.2013 being the audio CD, the transcript thereof, the certificate under Section 65B of Evidence Act and the affidavit of Ms.Lakshbir Gurtata be taken on record, but, the same will not in any manner mean that the documents as taken authentic by the courts or the documents are at all in any manner can be legally considered either at the interim stage or at the stage of final arguments or that these documents in any manner are proved and established in accordance with law or that the documents can be legally considered, and all such defences of the defendants are left open to be considered by the Court at an appropriate interim stage when the documents are sought to be relied upon or at the stage when the documents are sought to be proved

during the course of recording of evidence.

5. O.A is disposed of by consent in terms of the aforesaid observations.

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6. An Office Order dated 24.11.2015 has been issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, this suit is transferred for decision to the jurisdictional Court under the District & Sessions Judge (South) Saket Courts, New Delhi.

7. Let parties appear before District & Sessions Judge (South) Saket Courts, New Delhi on 19th April, 2016. Suit file be made available to the District & Sessions Judge (South) Saket Courts, New Delhi on the date fixed.

VALMIKI J. MEHTA, J

MARCH 08, 2016

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