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

Date of decision: 25th September, 2018

+ **ARB.P. 34/2013**

SATISH KUMAR MISHRA

..... Petitioner

Through: Mr. Hitendra Kumar Nahata & Ms.
Ritu Jain, Advocates (M-
9910290400).

versus

MEGHA SINGH

..... Respondent

Through: Mr. Sunil Mund, Mr. Bharat Bhushan
& Ms. Pooja Yadav, Advocates (M-
9650273107).

AND

+ **CS(OS) 3019/2014**

QUEENS FAIRMONT

..... Plaintiff

Through: Mr. Sunil Mund, Mr. Bharat Bhushan
& Ms. Pooja Yadav, Advocates (M-
9650273107).

versus

SATISH KUMAR MISHRA & ANR

..... Defendants

Through: Mr. Hitendra Kumar Nahata & Ms.
Ritu Jain, Advocates (M-
9910290400).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

**ARB.P. 34/2013 & CRL.M.A. 12644/2018, I.As. 4704/2015, 6663/2015,
13107/2018**

1. The present arbitration petition 34/2013 has been filed seeking reference to arbitration of disputes between the parties in respect of an agreement dated 19th January, 2011 containing the following clause:

*“That in case of any disputes, differences, question or
claim, counter claim [sic] arising out of our touching*

upon or concerning this Agreement or with regard to determination of duties, liabilities and obligations, rights, entitlements, benefits shall be referred to the Sole arbitration of an independent professional as may be appointed who will be a consented arbitrator and the arbitrator will take place in New Delhi. The provisions of arbitration and conciliation Act 1996 shall apply and the place of arbitration proceedings shall be at New Delhi. In the event of non-reaching to a consent for appointment of consented arbitrator, the matter shall be referred to the court for the appointment of any independent arbitrator.”

2. The background is that the Respondent Mrs. Megha Singh, herein purchased a piece of land in Jim Corbett National Park in the year 2010 and constructed a property by the name Queens Fair Mont, which was a resort. The Petitioner-Mr.Mishra, was to market the said property and for the purpose of marketing, it is the case of the Petitioner that agreement dated 19th January, 2011 was entered into. The clauses of the agreement relied upon by the Petitioner are not relevant for the present. The Respondent filed a reply and alleged that the agreement itself was never executed and that she never signed the agreement dated 19th January, 2011. It was also alleged that the original agreement having not been filed before the Court, the matter is not liable to be referred to arbitration. The Respondent also relied upon an FIR which was filed by her against the Petitioner alleging misappropriation, etc.

3. In rejoinder, the Petitioner has placed on record the copy of the agreement containing the original signatures of the Respondent. Vide order dated 24th March, 2014, this Court passed the following directions:

“The petitioner has filed, along with the rejoinder as

Annexure-2, photocopy of the agreement dated 19.01.2011 stated to have been arrived at with the respondent, which allegedly contains original signatures of the parties. According to the petitioner, the original of the agreement is in the possession of the respondent. Since the petitioner has placed on record a copy of the agreement which allegedly contains the signatures of the parties in original, the same would suffice.

Accordingly, the said document filed as Annexure-2 at pages 186 to 190 of the Part-I file be sealed and be sent to the CFSL for obtaining fresh report in terms of the order dated 26.07.2013.

Adjourned to 21.05.2014.”

Pursuant to the above order, the Joint Registrar obtained the original signatures of Smt. Megha Singh on blank sheets, and the same were certified and were sent to the CFSL. The CFSL has since submitted the report dated 25th February, 2015, as per which it has concluded as under:

“I have not observed any fundamental difference between both the sets of questioned and the standard signatures. Cumulative consideration of the aforesaid points of similarity observed between the questioned and the standard signatures in both the general & individual writing characteristics constitute the basis for the aforesaid opinion.

It has not been possible to ascertain the age of ink due to non availability of scientific technique in this Laboratory.”

4. In the meantime, the Respondent herein has also filed CS(OS) 3019/2014 seeking the following prayer:

“In view of the above, it is therefore most humbly

prayed that this Honble Court may be pleased to pass:-

(A) a decree in favour of the plaintiff and against the defendants for an amount of Rs. 20,15,000/- (Rupees twenty lacs fifteen thousand only) along with pendentlite interest @24% per annum from the date of filing of the suit till final realization;

(B) pass a decree of declaration thereby declaring that the agreement came into being between plaintiff and defendant No.1 orally as enumerated in the plaint and not as being purported by defendant No.1 which is false and fabricated document dated 19.1.2011 ;

(C) pass a decree of declaration thereby declaring that due to overt and covert acts of the defendant No.1, in collusion with defendant No.2, the plaintiff was forced to sell her resort and thereby suffered loss/damages on account of mental agony, loss of reputation and other ancillary losses to the tune of Rs.18 Crores, or as may be assessed by this Hon'ble Court;

(D) determine the damages/loss so caused and pass a decree in favour of the plaintiff and against the defendants thereby directing the defendants to compensate the plaintiff by paying the amount of loss/damages, so determined by this Hon'ble Court;

(E) the costs of the suit may also be granted/awarded in favour of the plaintiff and against the defendants;

Any other or further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants herein."

5. An application under Section 8 I.A.13485/2015, has been filed in the said suit, by Sh. Mishra seeking reference to arbitration. An application has also been filed under Order VII Rule 11 being I.A.13486/2015.

6. The only question to be adjudicated is whether the arbitration agreement exists between the parties or not, in light of the allegations raised by Smt.Megha Singh. A perusal of the order sheet of this Court clearly

reveals that sufficient efforts have been made to ascertain the genuinity and authenticity of the signatures of Ms.Megha Singh by referring the matter to the CFSL. Vide order dated 26th July, 2013, the photocopies of the agreement containing the original signatures of Smt. Megha Singh and the standard signatures duly certified by the Joint Registrar were to be compared. Vide order dated 29th January, 2015, the age of the ink in the original signature was also to be ascertained. The CFSL has returned the report saying that there is no fundamental difference between the two sets of signatures. Insofar as the age of ink is concerned, due to non-availability of scientific techniques, no opinion has been given.

7. Smt. Megha Singh was represented by two sets of counsels – one in the Arbitration Petition and the second counsel in the suit filed by her. Counsel for the Smt. Megha Singh submits that the agreement is forged and fabricated and hence there cannot be a reference to arbitration. Ld.counsel for Smt. Megha Singh appearing in the suit submits that there have been various correspondences including emails exchanged between the parties, which show that the contents of the agreement are contrary to the facts stated in these letters. Ld. Counsel specifically relies upon the e-mail and legal notice dated 27th July 2011 and 13th August 2012 respectively. Thus, he submits that contemporaneously, the agreement has been proved to have recorded wrong facts.

8. On the other hand, counsel for the Petitioner relies upon the order dated 21st December, 2017 in Criminal Revision no. 68/2017. This revision petition was adjudicated by the Additional Sessions Judge in the revision petition filed by Smt. Megha Singh in the criminal proceedings against Sh. Satish Kumar Mishra. In the said order, para 9 records as under:

“9. Ld. Counsel for the revisionist submitted that respondent has mis-represented the appellant and lured her to believe that he will provide a business of Rs.3 Crores per annum on 10% commission. He further submitted that appellant has believed the version of the respondent and even prepared a draft agreement which was never completed by the respondent in accordance with the changes made by her. He further submitted that the respondent has sent the guests of Ms. Sachin, CMD, Sachin Travels Pvt Ltd. He further submitted that the respondent has taken the payment from Mr. Sachin and retained with him. He submitted that the respondent has mis-appropriated the amount received by him on her behalf from Mr. Sachin. Ld. Counsel for the respondent has urged to the contrary.”

9. This Court has heard the submissions of the parties. A perusal of the CFSL report shows that the signatures of Smt Megha Singh in the agreement are hers. She may have disputes as to the contents of the agreement. A reading of the order in the Revision Petition dated 21st December 2017 also reveals that she does admit exchanging of some draft agreement. Further a perusal of the suit filed by Smt. Megha Singh also reveals that she does not dispute the arrangement with Sh. Mishra. It is also not disputed that the business to the tune of Rs.3 crores was to be generated. However, in the suit filed by Smt. Megha Singh, an oral arrangement is relied upon. The relevant pleadings in the suit are:

“4. That the defendant no.1 had also inter-alia promised to promote the business of the said resort of the plaintiff by working exclusively for it/plaintiff to bring brisk and productive business solely for the resort of the plaintiff and not working for any other resorts/hotels. To impress the plaintiff, he claimed that

he was not engaged with other business house/service. That the defendant no 1 had also made a proposal to the plaintiff that he would generate brisk and productive business to the tune of Rs 3.00 crores per annum for the said resort of the plaintiff, whereas it was later revealed that the above promises were made by him with his ulterior motive to lure and trap the plaintiff in his game of cheating and embezzlement. That the defendant no. 1 had also made a false promise of entering into a written agreement with the plaintiff in this regard as per the agreed terms and conditions. That in pursuance of the above mentioned misrepresentations made by the defendant no. 1, he forwarded an informal draft proposal (having unilateral clauses / interest) in writing to the plaintiff and after discussion, certain amendments and additions had become germane hence the said proposal was returned by the plaintiff for certain modifications to bring in tune with the letter and spirit of the discussions between the plaintiff and the defendant no. 1. While taking back the proposal for modifications as suggested by the plaintiff and agreed by the defendant no 1, he also made a promise of preparing another draft in terms of the suggestions of/discussions with the plaintiff, but since the day the draft brought by him was returned by the plaintiff for modifications, the conduct of the defendant no. 1 had become enigmatic. Instead of revising the draft in terms of the suggestions of the plaintiff and as agreed by the defendant no 1 and sending the same for approval and signatures by the plaintiff, the defendant no. 1 (since he wanted to milk the newly raised resort of the plaintiff) lured the plaintiff to provide hospitality to his and his master the defendant no. 2's guests in her resort on commission basis by giving false representations pending reduction into writing of the understanding arrived at between the defendant no. 1 and the plaintiff.

6. That relying upon the said false and hallucinatory representations of the defendant no.1, the plaintiff was lured to provide hospitality to the guests of the defendant No. 1 & 2 without insisting upon any immediate written agreement and with an understanding (based on his false and hallucinatory representations) to reduce into writing the written agreement at the earliest. All the aforesaid false and misleading representations were made by the defendant no.1 to the plaintiff in New Delhi.

That the plaintiff being a novice and a lady, had been beguiled by the false promises / representations of the defendant no. 1 for the running of the said resort of the plaintiff and that she was lured into providing hospitality to his and his master's (Defendant no.2) guests ignoring other prospective business proposals by similar marketing travel operators/agents in the said area as the proposal of the defendant no.1 was most attractive. That for few months the defendant no. 1 had failed to provide any customers for the said resort and when the plaintiff wanted his final answer about the same in this regard he had (concealing his real motive to cheat the plaintiff) regretted the delay but wanted and assured to do business as per the discussions with the plaintiff assuring to reduce into writing the written agreement at the earliest. Accordingly the defendant no.1 sent the first group of guests/visitors on 15/03/2011 at a unilaterally decided rate of Rs.1800/- per person on twin sharing basis with all meals plans included, that too on credit basis (without depositing even a penny in advance) which was against the business terms discussed by the plaintiff with the defendant no. 1. This was also against the standard of the said resort. This was unethical as also contrary to unequivocal understanding between the parties."

From the above mentioned narration, the following facts are clear:

- i) that there is an arrangement between the Petitioner and the Respondent.
- ii) that there is a draft agreement admittedly between the two parties.
- iii) while Respondent claims that it is an oral arrangement and the only written agreement is a draft, the Petitioner claims the same to be a signed agreement.

10. All the above facts, combined with the CFSL report show that there exists an arbitration agreement between the parties. Counsel for the Respondent submits that the CFSL report is contested. In an arbitration petition, there is no need hold a full fledged trial to examine as to whether the agreement exists or not, as argued by the Respondent. All that the Court needs to do is to examine the issue and take a view in the matter. In some cases the determination of whether there is forgery or not, may require trial, but this is not such a case. The factual narration above is sufficient for this Court to hold that there exists an arbitration agreement between the parties and the signature is not forged. Even apart from the CFSL report, there are other facts that support the existence of the arbitration agreement. Every vexatious allegation of forgery need not require a trial. It is only needed to be seen is whether the agreement is forged and fabricated or it is valid and genuine. This is the settled position as per ***Bharat Rasiklal Ashra v Gautam Rasiklal Ashra (2012) 2 SCC 144***. The Supreme Court observed therein as under:

“16. The learned counsel for the first respondent next submitted that if the Chief Justice or his designate is required to examine the allegations of fabrication and forgery made by a party in regard to the contract containing the arbitration agreement, before

appointing an arbitrator under Section 11 of the Act, the proceedings under the said section will cease to be a summary proceedings, and become cumbersome and protracted, necessitating recording of evidence, thereby defeating the object of the Act. In our considered view this apprehension has no relevance or merit. Existence of a valid and enforceable arbitration agreement is a condition precedent before an arbitrator can be appointed under Section 11 of the Act. When serious allegations of fraud and fabrication are made, it is not possible for the court to proceed to appoint an arbitrator without deciding the said issue which relates to the very validity of the arbitration agreement. Therefore the fact that the allegations of fraud, forgery and fabrication are likely to involve recording of evidence or involve some delay in disposal, are not grounds for refusing to consider the existence of a valid arbitration agreement.

17. The apprehension that such contentions are likely to be raised frequently to protract the proceedings under Section 11 of the Act or to delay the arbitration process, thereby defeating the purpose of Section 11 of the Act is also without basis. Where agreements have been performed in part, such a contention will not be entertained. It is only in a very few cases, where an agreement which had not seen the light of the day is suddenly propounded, or where the agreement had never been acted upon or where sufficient circumstances exist to doubt the genuineness of the agreement, the Chief Justice or his designate will examine this issue. This Court has repeatedly held that on the ground of termination, performance or frustration of the contract, arbitration agreement cannot be avoided. The legislature has entrusted the power of appointment of an arbitrator to the holders of high judicial offices like the Chief Justice or a Judge of the Supreme Court/High Court, with a view that they can identify and effectively deal with false or vexatious

claims made only to protract the proceedings or defeat arbitration. If a party is found to have falsely contended that the contract was forged/fabricated, the Chief Justice or his designate may subject such party to heavy costs so that such false claims are discouraged. Be that as it may. ”

As per the above judgement, a trial in such a case is not mandated. There is in effect part performance of the arrangement/contract itself – which is sufficient to recognise the arbitration clause. Ld. Counsel appearing for Smt. Megha Singh also contend that they have placed on record the report of a private handwriting expert to the effect that the signatures are not genuine. In the light of the opinion of CFSL greater merit cannot be accorded to a report filed at the instance of the party. This is the view of this Court in ***UCO Bank v Joshika Agencies RFA No. 316/1997 (Decided on 14th December, 2010)*** and ***Vimla Devi Vs. State and Anr. Cr. Misc. Petition No. 1913/2010 (Decided on 27th October, 2010)***

11. The facts in the present case reveal that there are disputes between the parties. While Smt. Megha Singh alleges that the signatures on the agreement are fabricated, she does not dispute the existence of an agreement. While it is her stand that the agreement is an oral agreement, it is Mr. Mishra's stand that the agreement is in writing and he has placed a copy on record which contain her original signatures as per the CFSL report. Thus, at least in so far as the arbitration clause is concerned, the signatures of Smt. Megha Singh are to be taken as authentic and genuine. Once this is held so, the question as to whether there is any tampering with the other clauses, difference in the terms agreed etc., are questions to be determined by the Ld. Arbitrator. As per the judgement in ***Velugubanti Hari Babu Vs.***

Parvathini Narasimha Rao, (2016) 14 SCC 126, the Court has to deal with the allegations of forgery. However, it is not necessary in every case for the Court to hold a full trial as to the authenticity of each and every clause in the agreement before referring the parties to arbitration. The broad arrangement between parties exists, as is clear from the suit filed by Smt. Megha Singh. In fact she is seeking damages of Rs. 18 crores from Mr. Mishra based on the arrangement.

12. For the reasons stated above i.e. the pleadings in the suit, the order passed in the revision petition as also the CFSL report, this Court finds that the signatures of Smt. Megha Singh in so far as the arbitration agreement is concerned, are valid and genuine. The challenge to the same is untenable.

13. The disputes between the parties are referred to the sole arbitration of Justice S.P. Garg (Retired) Judge. The Learned Arbitrator shall consider all the objections of the Respondent in respect of the terms of the agreement between the Petitioner and Respondent. Smt Megha Singh is permitted to raise all her objections and claims before the Ld. Arbitrator. This Court has not expressed an opinion on the various clauses of the agreement or the merits of the disputes between the parties.

14. Parties to appear before the Sole Arbitrator on 2nd November, 2018.

15. All the I.As as also the main petition Arb.P.34/2013 are accordingly disposed of in the above terms. In view of the findings given above that there is no forgery, CrI.M.A.12644/2018 is dismissed.

I.A. 13485/2015 (under section 8 of Arbitration and Conciliation Act) in CS(OS) 3019/2014

16. In view of the order passed above, I.A. is allowed and is accordingly disposed of.

I.A. 13486/2015(under order VII Rule 11 CPC) in CS(OS) 3019/2014

17. In view of the order passed above, I.A. becomes infructuous and is disposed of.

CS(OS) 3019/2014 & I.A. 3091/2018

18. The suit is liable to be rejected with liberty to the Plaintiff to raise all her claims and seek reliefs before the Ld. Arbitrator, except insofar as it relates to her signatures in respect of the arbitration agreement. All allegations, objections and claims of the Respondent are left open.

19. Arb.Petition 34/2013 and CS (OS) 3019/2014 are accordingly disposed of.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 25, 2018
Rahul