

CR-6416-2014 (O&M)

Date of decision: 13.09.2021

Vodafone South Ltd. and others

.....Petitioners

versus

Satya Enterprises

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Vishal Gupta, Advocate
for the petitioners.Mr. Harish Chhabra, Advocate
for respondent No.1.**FATEH DEEP SINGH, J.**

The revisionist (wrongly denoted the appellants) before this Court, namely, Vodafone South Limited, has come up against Satya Enterprises seeking setting aside of order dated 29.04.2014 (Annexure P-5) passed in an application under Section 8 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') by the Court of the learned Civil Judge (Junior Division) Chandigarh.

Heard counsel of both the sides and perused the records.

Admittedly, the revisionist-Vodafone South Limited, a Company, had appointed respondent No.1-Satya Enterprises, as their franchisee vide agreement dated 02.01.2007 (Annexure P-1)

with the stipulation that there has to be compliance of Rules and Regulations of Department of Telecommunication (DOT). Some sort of dispute had arisen between the parties leading to termination of the franchisee of Satya Enterprises and the latter filed a suit for recovery of Rs.7,67,812/- against Vodafone under various heads of commission, security, interests *et cetera*. During the pendency of the suit before the Court of learned Civil Judge (Junior Division), Chandigarh, an application under Section 8 of the Act was moved on behalf of the plaintiff-Satya Enterprises for referring the matter to Arbitration under Clause 30 of the agreement (Annexure P-1).

The then defendant, now revisionist, took the stand in their reply, though an agreement was drafted but it was destroyed by the Vodafone Company in the presence of the plaintiff and on the asking, a photostat copy of the agreement dated 02.01.2007 (Annexure P-1) purported to have been executed between the plaintiff and the defendants, was placed on record but the revisionist claim that original be placed on the record. Taking further plea that in the absence of the original agreement, the Court could not consider and pay heed in relying upon the agreement which has been brought on the record and, therefore, sought dismissal of the application for referring the matter to Arbitration. Through the impugned order dated 29.04.2014, the learned Court of Civil Judge (Junior Division), Chandigarh, dismissed the application and that is how the parties are before this Court.

Heard.

Support has sought to be taken by placing reliance upon judgments passed in 'A. Ayyasamy versus A. Paramasivam and others' 2017 (2) RCR Civil 518; 'Mrs. Hema Khattar and another versus Shiv Khera' 2017 (3) RCR Civil 277; 'Booz Allen and Hamilton Inc. versus SBI Home Finance Ltd. and others' 2011 (2) ArbiLR 155; 'M/s Sundaram Finance Limited and another versus T. Thankam' 2015 (2) All WC 1957; 'Chandigarh Industrial and Tourism Development Corporation Ltd. and another versus M/s K.B. Hotels Pvt. Ltd.' 2018 (1) BC 598; 'Bharat Sewa Sansthan versus UP Electronics Corporation Ltd.' 2008 (1) Mh.LJ 555; 'Ananthesh Bhakta Represented by Mother Usha A. Bhakta and others versus Nayana S. Bhakta and others' 2017 (1) R.A.J. 303; 'M/s Unissi (India) Pvt. Ltd. versus P.G. Institute of Medical Education and Research' 2009 (3) Mh.LJ 80; and 'M/s Vishal Retail Limited versus Sachin Deep Sood and others' 2015 (6) ArbiLR 52 to impress upon the Court that where there is an arbitration agreement, the Civil Court has no jurisdiction to entertain a suit and the matter has to be referred to the arbitrator by all means and which is controverted by Mr. Harish Chhabra, Advocate for the opposite side trying to hammer home the points raised by counsel for the revisionist by placing reliance upon the judgments passed in 'N. Radhakrishnan versus M/s Maestro Engineers and others' 2010 (1) SCC; 'Smt. Chinoo Sarkar versus Vodafone Essar Spacel Ltd.' CRP No.160 of 2013; 'Reliance Infratel Ltd. Versus Chanderwati' CMPMO No.458 of 2010; 'Sri E.S. Satish Kumar and others versus Sri K.V. Jayaprakash and

others' CRP No.26 of 2017, that it is a case of cheating and fraud by the plaintiff and in view of denial by the Vodafone and allegations being of fraud simplicitor and, therefore, such issue can be adjudicated by the arbitral Tribunal.

It needs to be stressed here that the very stand of the Vodafone shows they admit that some sort of agreement had come about between the parties and their claim that it was subsequently, destroyed rather gives an inkling that such an agreement had certainly come into existence between the parties, for which, a photostat copy has been placed on the record (Annexure P-1). Thus, the claim and counter-claim of the two sides that the agreement placed on the record, is forged or tampered and if there was any arbitral clause in the said agreement for referring the dispute to the Arbitrator, is a matter which needs to be adjudicated by comprehensive evidence. No doubt in terms of Sections 101, 102 and 103 of the Evidence Act, burden of proving is upon a party who alleges it and it would have been well within the powers of the parties and the Court trying the matter that where it was satisfied that proof of the agreement between the parties cannot be led by primary evidence in terms of Section 64 of the Evidence Act then secondary evidence leading to this agreement could have been easily called for in terms of Section 65 of the Evidence Act. Nothing is elicited from the arguments of the two sides whether there has been resortation to Sections 66 and 67 of the Evidence Act seeking notice to produce

the document in question and proof of signatures and handwriting of the person alleged to have signed the same which is well-elicited from Annexure P-1 which carry signatures *et cetera* and even during the course of examination of the witnesses in terms of Section 144 of the Evidence Act question could have been easily put to the witness during the course of examination as to the contents of the document under dispute. The similar proposition had arisen in case of 'N. Radha Krishnan versus M/s Maestro Engineers and others' 2010 (1) SCC where the Hon'ble Apex Court, considering such aspect of the matter relating to jurisdiction of the arbitrator to decide a dispute pertaining to a fact where allegations of fraud and serious malpractices on the part of a party are in question, such a matter can easily be settled in Court to furtherance detailed evidence by either of the parties in a Civil Court and cannot be properly gone into in arbitration proceedings.

Thus, in light of what has been detailed and discussed above, the impugned order, as such, is set aside. The matter is remanded back to the Trial Court to frame necessary issues over the very legality, validity and enforceability of agreement (Annexure P-1) and adjudicate upon the same in accordance with law.

The parties, through their counsel, are directed to appear before the Trial Court on 28.10.2021.

13.09.2021
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No