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

+ **ARB.P. 848/2024**

SHALINI KATYAL SHALINI SHARMAPetitioner

Through: Mr. Karanjot Singh Mainee, Mr.
Sahil Chopra, Ms. Wasia Naqvi,
Advocates [9717413994].

versus

NITIN KATYALRespondent

Through: Mr. Daljeet Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

23.09.2024

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1. By way of this petition, under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under an agreement dated 01.08.2022 entitled “Deed of Family Settlement” [“the Agreement”].

2. A copy of the Agreement has been placed on record. The parties, who are siblings, are the two executants of the Agreement. The Agreement purports to distribute the properties and assets of their late parents.

3. The Agreement contains a provision [Clause 11] for resolution of disputes by arbitration. It purports to bear the signature of both the parties and two witnesses. Mr. Karanjot Singh Mainee, learned counsel for the petitioner, states that the Agreement was also notarised at the time of



execution.

4. Disputes having arisen between the parties, the petitioner invoked arbitration by a legal notice dated 01.05.2024. The respondent replied, through his counsel on 15.05.2024. The petitioner's claims were disputed on merits. It is also stated that the respondent has instituted a civil suit before the District Courts in Gurgaon, Haryana and in Patiala House Court, New Delhi, with regard to the properties.

5. The same grounds have been taken in the reply filed by the respondent to the present petition also. Mr. Daljeet Singh, learned counsel for the respondent, submits that the Agreement itself is forged and fabricated and has not been signed by the respondent.

6. I have heard learned counsel for the parties.

7. At the stage of proceedings under Section 11 of the Act, the Court is required to only examine the *prima facie* existence of the arbitration agreement. As far as the existence of an arbitration agreement is concerned, a recent judgment of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning* [2024 SCC OnLine SC 1754], makes it clear that a final determination on the aforesaid question is to be left to the arbitral tribunal, as are all other disputes with regard to maintainability and arbitrability of claims, as well as the merits. The relevant extracts of the *SBI General Insurance (supra)* are as follows:

“110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7.

The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

111. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima



facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to ‘rule’ under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

112. The aforesaid approach serves a two-fold purpose - firstly, it allows the referral court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.”

[Emphasis supplied]

8. A copy of the Agreement dated 01.08.2022 placed on record *prima facie* bears the signatures of the parties and contains an arbitration clause. I am therefore satisfied that the parties are required to be referred to arbitration. However, it is made clear that a final determination on the question of the existence of arbitration clause as on all other issues, is to be taken by the arbitral tribunal.

9. Having regard to the above, the petition is disposed of by referring the disputes between the parties to arbitration of Hon’ble Ms. Justice Indira Banerjee, former Judge, Supreme Court of India [Tel: 9560808777]. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

10. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

11. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitrator. This Court has not examined the case on merits, and the averments in the petition are also



not to be taken as admitted by the respondent.

12. The petition is disposed of in the aforesaid terms

PRATEEK JALAN, J

SEPTEMBER 23, 2024

'Bhupi'/'