

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

% *Date of Judgment: 30.01.2012*

+ **CM(M) 291/2011 & CM Nos. 5250/2011 & 6278/2011**

KHALEEK AHMED Petitioner
Through Mr. Abinash K. Mishra, Adv.

versus

MOHD NAVED ANSARI & ANR Respondents
Through Mr. R.K. Sharma, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 07.01.2011 vide which the objections of the defendant to the settlement arrived at between the parties before the Mediation Centre, Karkardooma Court, Delhi on 20.07.2010 had been allowed to be set aside and the objections raised by the defendant that he had been coerced to make this submission before the Mediator had been accepted; necessary corollary was that the parties were held not bound by the mediation proceedings; the matter was fixed for framing of issues.

2. Record shows that the present suit is a suit which has been filed by the plaintiff and against the defendant for declaration, possession and

permanent injunction. The disputed premises comprise of property No. 460 (New No.2/490) Gali No. 2, Kardam Puri Extension, Delhi measuring about 30 square yards comprise in khasra No. 368. Contention of the plaintiff was that defendant No. 2 Brij Mohan had sold this property to defendant No. 1 Mohammad Naved Ansari who had sold it to the plaintiff Khaleek Ahmad. On 12.07.2010 at the request of the parties, the matter had been referred for mediation before the mediator. All parties i.e. the plaintiff, defendant No. 1 and defendant No. 2 were present in person on that date. Matter had been fixed before the Mediator for 12.07.2010 at 12:00 noon. The statement recorded by the Mediator was on 20.07.2010 which is noted herein as under:-

“Heard the parties jointly and separately. Several proposal came up for consideration and finally, both the parties have arrived at an amicable settlement on the following terms and conditions:-

- 1. That the defendant No. 2 shall pay the sum of Rs.5,50,000/- out of which Rs.50,000/- has already been paid by the plaintiff to the defendant No. 2. The balance amount of Rs.5,00,000/- shall be paid by defendant No. 2 to the plaintiff till 12.08.2010.*
- 2. That on the payment of above amount, the plaintiff will transfer all rights, title and interest in respect to property bearing No. 460 (New No.2/490) Gali No. 2, Kardam Puri Extension, Delhi measuring about 30 square yards comprise in khasra No. 368 in favour of the defendant No. 2 and execute necessary papers in this regard before the concerned*

authority.

- 3. That after the compliance of the above, plaintiff would be left with no rights, title and interest in the property bearing No. 460 (New No.2/490) Gali No. 2, Kardam Puri Extension, Delhi measuring about 30 square yards comprise in khasra No. 368.*
- 4. That the cost of registration and stamp duty of above documents will be born by defendant No. 2. Parties will bear their own cost of litigation.*
- 5. That plaintiff would withdraw his suit in terms of compromise when the same are carried out.”*

3. This statement clearly states that after several proposals which had come up for consideration, the aforementioned settlement was arrived at between the parties. This statement was duly signed by the plaintiff, his counsel as also defendant No. 2 Brij Mohan who was present in person. After this settlement, matter was sent back to the Court and was listed for 16.08.2010 where counsel for the respective parties were present. The Court had adjourned the matter for compliance of the terms and conditions settled between the parties. Matter was renotified for 27.08.2010. On 27.08.2010 also counsel for both the parties were present and the matter was renotified for 18.09.2010. On 18.09.2010, defendant No. 2 had made a statement before the Court that he wished to disown the settlement of 20.07.2010 on the ground that he had signed the same under threat on gun point by goons of the plaintiff who were

standing outside the Mediation Centre; matter was thereafter adjourned for 07.10.2010. On 07.10.2010, defendant No. 1 not being present had been proceeded ex-parte. On 09.11.2010, the matter was listed for 20.11.2010 and thereafter on subsequent dates till the time when the impugned order was passed which was on 07.01.2011 accepting the statement of defendant No. 2 that he is permitted to disown the statement made by him before the Mediator.

4. Learned counsel for the petitioner is aggrieved by this order. His contention is that the very purpose of the provisions under Section 89 Rule 1 (d) of the Code of Civil Procedure (hereinafter referred to as the 'Code') as also Rules 24 & 25 of the Mediation and Conciliation Rules, 2004 would be frustrated and would be given a go-bye if this settlement which has been arrived at between the parties is allowed to be negated after such a long period. He has placed reliance upon a judgment of a co-ordinate Bench of this Court reported in CS(OS) No. 1495/2005 dated 06.07.2009 titled as Ashish Gupta Vs. Purshotam Lal Bajaj & Others, Sh. Abdul Saliq Khan Vs. Shri Nahid Khan & Others delivered on 25.02.2011 in RSA No. 30/2011 as also another judgment of a Bench of this Court delivered in CS(OS) No.2248/2010 delivered on CM (M) No. 291/2011

01.09.2011 Naveen Kumar Vs. Smt. Khilya Devi & Anr. These judgments do support the case of the petitioner.

5. Record shows that in the instant case, a settlement had been arrived at between the plaintiff and defendant No. 1 which was duly incorporated and contained in this settlement recorded by the Mediator on 20.07.2010. Thereafter the matter was adjourned for two dates i.e. 16.08.2010 and 27.08.2010 on which dates counsel for the respective parties including counsel for the petitioner was present. The order of 16.08.2010 in fact recorded that the matter be listed for compliance of the terms and conditions as settled between the parties for 27.08.2010 meaning thereby that the parties had agreed to comply with the terms and conditions of their settlement recorded by the Mediator. Even on the next date, there was no grievance. Thereafter the petitioner/defendant No. 2 turned around from his stand and took a diametrically opposed one on 18.08.2010 when he made an oral submission before the Court that he had signed this agreement on the point of threat. Otherwise, there is no dispute that the settlement had been signed by him and the said settlement bore his signatures. It is also an admitted position that in this intervening period, the defendant had never assailed this facts.

6. The Legislature by the amendment in the Code of Civil Procedure, 2002 has inserted Section 89; the purpose was to promote the settlement of disputes through the process of Mediation; once disputes between the parties have been settled by this process of mediation, it would be in the public interest as also to attach importance to such a process and treat the settlement as a solemn settlement; otherwise the newly inserted Section 89 of the Code would become infructuous if the parties at subsequent dates are allowed to wriggle out of such a settlement; the purpose and import of this provision would necessarily be given a go-bye.

7. In fact a Bench of this Court in Abdul Saliq Khan (Supra) while dealing with the Mediation and Conciliation Rules, 2004 in this context had noted as under:-

“A conjoint reading of Rule 24 (b) and 25 (a) shows that where an agreement has been reached between the parties with regard to all the issues in the suit or proceeding of some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney; the agreement so signed shall be submitted to the Mediator/Conciliation who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending. There is then a mandate upon the court to pass a decree after the afore-noted settlement has been arrived at.”

8 In the instant case as well, the parties had arrived at a settlement on 20.07.2010; this was duly signed by them including the present petitioner. Thereafter on a subsequent date, which was on 16.08.2010, the Court had recorded that the matter would now be listed for compliance of the terms and conditions of the aforementioned settlement which was again an order passed in the presence of counsel for the parties. This was reiterated on 27.08.2010. Right up to 18.09.2010, there was no dispute about this settlement; the petitioner could not thereafter unilaterally be permitted to go back from this settlement for no cogent reason or plausible explanation. The whole purpose and import of Section 89 of the Code would become frustrated if such like settlement is arrived at by the will and consent of the parties are thereafter permitted to be withdrawn; the idea of the petitioner being threatened by goons standing outside the Mediation Centre does appear to be a far-fetched story; there also being no explanation as to why this story did not surface on the following two dates after 20.07.2010.

9 The judgments relied by learned counsel for the petitioner also support his submissions. There was no valid ground to discharge defendant No. 2 from the aforementioned settlement dated 20.07.2010, the

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impugned order holding otherwise is accordingly set aside. Petition is allowed.

INDERMEET KAUR, J

JANUARY 30, 2012
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