

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

+ **W.P.(CRL) 1018/2010 & Crl. M.A.No. 8566/2010**

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Reserved on: 13<sup>th</sup> February, 2012

Decided on: 14<sup>th</sup> March, 2012

**RAKESH KUMAR**

..... Petitioner

Through

Mr. Nitin Bhardwaj, Advocate

versus

**STATE & ANR.**

..... Respondents

Through

Mr. Saleem Ahmed, ASC for the State  
with SI Ravi Kumar.

Mr. Surender Singh, Adv. for R-2.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present petition the Petitioner seeks quashing of the FIR No. 499/1999 under Sections 406/498A/34 IPC registered at PS Rohini, Delhi on the complaint of Aasha since deceased, daughter of Respondent No. 2.

2. Learned counsel for the Petitioner contends that during the trial of the above-mentioned FIR, the complainant Aasha died on 2<sup>nd</sup> September, 2007 and her father the Respondent No. 2 herein was impleaded as legal representative along with the minor children of the complainant. The matter was referred to the mediation Cell on 16<sup>th</sup> February, 2009 where the parties entered into a settlement. As per the terms of the settlement, the Petitioner was to deposit Rs. 1 lakh each in the account of the two minor children and he deposited the same in the account of his two minor children which was to be converted into FDR by Respondent No. 2. After the Petitioner fulfilled the conditions on his behalf and nothing remained to be complied with by

him the Respondent No. 2 did not honour the settlement and refused to give no objection to the quashing of the FIR and the other proceedings. Thus the Petitioner seeks quashing of the FIR on the ground that the Respondent No. 2 having entered into a settlement is bound by the terms of settlement and he cannot now resile therefrom. Reliance in this regard is placed on *Surinder Kaur and others vs. Pritam Singh and others*, 154 (2008) DLT 598 and *Jaibir and others vs. State and another*, 142 (2007) DLT 141.

3. Learned counsel for Respondent No. 2 on the other hand contends that the settlement in the mediation proceedings is not complete and binding till the statements of the parties are recorded before the referral judge. According to him before the matter could be finally laid at rest, the Respondent No. 2 herein resiled from the settlement and thus the trial be concluded in accordance with law. Respondent No. 2 is willing to return the amount of Rs. 2 lakhs deposited in the form of FDRs in the name of the two children of the petitioner. Reliance in this regard is placed on *Afcons Infrastructure Limited and another vs. Cherian Varkey Construction Company Private Limited and others*, 2010 (8) SCC 24.

4. I have heard learned counsel for the parties.

5. Section 89 and Order 10 Rule 1-A to 1-C of the Civil Procedure Code lay down the provision and procedure relating to alternate dispute resolution, which read as under:-

89. Settlement of disputes outside the Court.(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties

for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

- (a) arbitration;
- (b) conciliation
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute had been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.]

Order X Rule 1-A. Direction of the Court to opt for any one mode of alternative dispute resolution- After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of Section 89. On the option of the

parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1-B. Appearance before the conciliatory forum or authority-Where a suit is referred under rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit.

1-C. Appearance before the Court consequent to the failure of efforts of conciliation-Where a suit is referred under rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.

6. The report of the learned Mediator dated 16<sup>th</sup> February, 2009 reads as under:

“A matter titled S/v Rakesh Kumar etc was referred for mediation by Id. Judge in-charge, Mediation Rohini Courts, Delhi. Along with the said matter, four other connected matters viz a petition u/S 126 Cr.P.C, titled Asha and others vs. Rakesh Kumar was also received besides two execution petition having been filed on behalf of Asha and her two children, namely, Master Prateek and Baby Pratima.

Yet one other complaint case titled Asha vs. Rakesh Kumar and others, u/S 200 Cr.P.C. for the offences u/S 494/504/506/34 IPC read with Section 120B IPC was also referred by Id. Judge In charge, Mediation Centre, Rohini Courts, Delhi.

Ld. Counsel has also informed that one other execution petition titled Asha vs. Rakesh Kumar has also been filed by them in the court.

Present: Sh. Rakesh Singh, father of Asha (since deceased) along with Raj Kumar, brother of Asha with Id. Counsel Sh. B.P. Singh.

Respondent Rakesh Kumar along with his brother Bijender Kumar and his brother-in-law Naresh Kumar along with Id. Counsel Sh. Nitin Bhardwaj.

After hearing both the parties and making efforts during the course of mediation proceedings, an amicable settlement was voluntarily arrived at by both the parties towards full and final settlement of their all disputes with respect to the aforesaid matters, be it past, present or future.

The parties have arrived at the following voluntarily settlement:

1. That as Asha has expired in the year 2007 so, the petition u/S 125 Cr.P.C. was being proceeded only on behalf of the two children namely, master Prateek and Ms. Prateema.
2. That Ramesh Singh has moved an application in the petition u/S 125 Cr.P.C. for his appointment as guardian of the two minor children, namely, master Prateek and Ms. Prateema. Sh. Rakesh Kumar has submitted that he will file his no objection before the court in appointing Ramesh Singh as guardian of the two children.
3. That Rakesh Kumar has agreed to make a payment of rupees one lakh each towards the two children i.e. a total payment of rupees two lakhs towards the two children towards all past, present and future claims of maintenance or any other claim whatsoever on behalf of the two children and deceased Asha.
4. That it has been agreed that initially Rakesh Kumar shall make a payment of rupees fifty thousand each to the two children which shall be deposited in UCO Bank, Prashant Vihar Branch, Delhi in their respective savings bank account which are already being maintained over there and Sh. Ramesh Singh shall convert them into fixed deposit receipts for a period of five years within seven days thereafter. Sh. Ramesh Singh shall convey the account number to Id. Counsel Sh. Nitin Bhardwaj within two days.

5. That the initial payment of rupees one lakh in the sum of rupees fifty thousand to each of the two children shall be made on and before 20.3.2009 in the savings bank account of the two children at UCO Bank, Prashant Vihar Branch, Delhi.
6. That the second installment of rupees one lakh i.e. rupees fifty thousand in the name of the each of the two children shall be made on or before 20<sup>th</sup> May, 2009 in their respective savings bank account at UCO Bank, Prashant Vihar Branch, Delhi and Sh. Ramesh Singh shall convert them into fixed deposit receipts for a period of five years within seven days thereafter.
7. That it has been agreed that the maturity amount of the said fixed deposit receipts shall be payable to the two children at the time of the maturity along with the interest which had accrued till then.
8. That in the fixed deposit receipt of master Prateek, Ms. Prateema will be the nominee and in the fixed deposit receipt in the name of Ms. Prateema, master Prateek shall be the nominee.
9. That Ramesh Singh and his family shall render all assistance in withdrawing/quashing of all the litigations pending between the parties.
10. That Rakesh Kumar has apologized to Ramesh Singh for his past conduct.
11. That after the final execution of this agreement Rakesh Kumar shall have no claim whatsoever of any nature towards his two children and at the same time the two children will have no claim of any nature whatsoever qua Sh. Rakesh Kumar, be it for the past present or future liabilities of either of the two parties.

Both the parties have undertaken to remain bound by the terms and conditions of the settlement.

A copy of this agreement be placed in all the five files.”

7. In *Afcons Infrastructure Ltd. & Another v. Cherian Varkey Construction Company Pvt. Ltd. and others*, (2010) 8 SCC 24, it was held:-

“39. Where the reference is to a neutral third party (“mediation” as defined above) on a court reference, though it will be deemed to be reference to Lok Adalat, as the court retains its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal. Where the matter is referred to another Judge and settlement is arrived at before him, such settlement agreement will also have to be placed before the court which referred the matter and that court will make a decree in terms of it.

40. Whenever such settlements reached before non-adjudicatory ADR fora are placed before the court, the court should apply the principles of Order 23 Rule 3 of the Code and make a decree/order in terms of the settlement, in regard to the subject-matter of the suit/proceeding. In regard to matters/disputes which are not the subject-matter of the suit/proceedings, the court will have to direct that the settlement shall be governed by Section 74 of the AC Act (in respect of conciliation settlements) or Section 21 of the Legal Services Authorities Act, 1987 (in respect of settlements by a Lok Adalat or a mediator). Only then such settlements will be effective.”

8. In the present case after the case was settled at the mediation centre, it was received back on 24<sup>th</sup> March, 2009 when the learned Presiding Officer was on leave. Even on the next date i.e. 11<sup>th</sup> July, 2009, the learned Presiding Officer was on leave. On 30<sup>th</sup> September, 2009 when the matter was next listed, Respondent No.2 resiled from the settled praying that the case be disposed of as per law. It is thus evident that pursuant to the mediation, the Trial Court had passed no order disposing of the case when the Respondent No.2 resiled from the settlement.

9. It would thus be noted that the Petitioner has complied with the actions to be taken on his part and nothing remains to be performed by him. However, the Respondent No. 2 after taking the benefit of settlement on behalf of the two children has resiled therefrom by stating that he was not happy with the settlement.

10. Since the Trial Court did not record the settlement and dispose of the matter in terms thereof, the settlement had not become final and binding in view of the law laid down in *Afcons Infrastructure Limited*. Thus, the Petitioner cannot claim any relief on the said basis. However, as Respondent No.2 has already received benefit in terms of the settlement and is ready to return the amount of Rs.2 lakhs deposited in the form of FDRs in the name of two children of the Petitioner, he will restore the same to the Petitioner. It is, therefore, directed that Respondent no.2 will return back the amount of Rs.2 lakhs along with interest that may have accrued thereon within four weeks.

11. Petition and application are disposed of accordingly.

**(MUKTA GUPTA)**  
**JUDGE**

**MARCH 14, 2012**  
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