

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

+ **CRL.M.C. 4971/2013 & CrI.M.A. 17872/2013**

Date of Decision : February 25th, 2016

SANDEEP NAYYAR

..... Petitioner

Through Mr.S.Chatterjee, Adv. with
Ms.Suparna Chatterjee, Adv.

versus

VEENU KALRA & ANR

..... Respondents

Through Mr.Vimal Kumar, Adv. for R-1.
Mr.Vinod Diwakar, APP for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") read with Article 227 of the Constitution of India has been filed by the petitioner for quashing/setting aside the order dated 14.05.2013 passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi and issuance of direction to respondent no.1 to comply with the terms and conditions of the proceedings arrived at the Mediation Cell, Tis Hazari Courts, Delhi on 31.07.2012.

2. Factual matrix, emerges from the petition, is that the petitioner

had filed a complaint under Section 138 of the Negotiable Instruments Act (N.I. Act) against the respondent no.1. The Trial Court took cognizance of the offence and summoned the respondent no.1. The respondent no.1 appeared before the Court and she was admitted to bail. On 26.09.2011, notice was framed against the respondent no.1 to which she did not plead guilty and claimed trial. On 13.03.2012, the respondent no.1 filed an application under Section 145(2) of the N.I. Act. On 31.07.2012, the parties agreed to mutually settle the matter. The respondent no.1 agreed to pay Rs.18.70 lakhs to the petitioner towards full and final settlement. The respondent no.1 paid Rs.1 lakh on 31.07.2012, Rs.5 lakhs on 02.11.2012 and Rs.40,000/- on 08.03.2013 to the petitioner. On 01.04.2013, the respondent no.1 submitted before the Court that she was not in a position to make any further payment. On the request of the respondent no.1, the Court allowed the application under Section 145(2) of the N.I. Act on 14.05.2013.

3. Feeling aggrieved of the passing of order dated 14.05.2013 and non-compliance of settlement dated 31.07.2012, the petitioner has preferred the instant petition.

4. I have heard the arguments advanced by the learned counsel for the petitioner, learned counsel for the respondent no.1 as well as learned APP for the State.

5. Argument advanced by the learned counsel for the petitioner is that the matter was referred to the mediation centre as both the parties voluntarily agreed to settle the matter. It is further argued that mediation is a negotiating process which has been recognized by the

Courts as one of the modes of settlement. It is submitted that if the respondent no.1 backs out from the settlement arrived at mediation centre, it is a clear non-compliance of the binding settlement. It is further argued that the respondent no.1 admitted her liability due to which she paid Rs.7.40 lakhs out of Rs.18.70 lakhs due to which application under Section 145(2) of the N.I. Act was not maintainable.

6. It is apparent from the record that the matter was referred to the Mediation Centre as it was jointly agreed by the parties that they would settle their dispute through mediation. The settlement was arrived at between the parties on 31.07.2012. It is also apparent that after making payment of Rs.7.40 lakhs, it was submitted by the respondent no.1 before the Court that she was unable to pay the remaining settlement amount. Since the respondent no.1 showed her inability to pay the remaining amount and wanted to put her defence, the Trial Court found the defence raised by her plausible and allowed the application under Section 145(2) of the N.I. Act.

7. There is no illegality or infirmity in the impugned order dated 14.05.2013 inasmuch as when one of the parties to the settlement backs out from the same, the right of putting defence cannot be curtailed and no party can be compelled to enter into settlement or to abide by the terms of such settlement. A settlement entered into by the parties can be given effect only when all the parties to the settlement agree and abide by the same. If, at any stage, any of the parties avoids any of the terms of the settlement, the Court cannot compel that party to fulfill the settlement. It is the choice of the party to enter into the agreement and if such party back down, then there

may be other remedies available with the aggrieved party, but this Court cannot compel the terms on the failing party. It was the free will of the parties to enter into settlement and if it is found at any stage that they were not willing to perform their part, they can back out from the same. The plea of the petitioner to direct the respondent no.1 to comply with the settlement arrived at on 31.07.2012 is not sustainable inasmuch as the complaint has already been filed by him for dishonor of cheque.

8. In view of the foregoing discussion, this Court is of the considered opinion that no case is made out for quashing or setting aside the order dated 14.05.2013 and no interference is warranted in the present case under Section 482 of Cr.P.C. by this Court.

9. Consequently, the present petition is dismissed.

10. Application CrI.M.A. 17872/2013 is also disposed of.

FEBRUARY 25, 2016
dd

(P.S.TEJI)
JUDGE