

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5096/2015 & CrI.M.A. 18348/2015**

Date of Decision : January 13th, 2016

ANGLE INFRASTRUCTURE P.LTD. Petitioner
Through Mr.Akhil Sibal,Ms.Bina Gupta,
Advocates.

versus

STATE (NCT OF DELHI) & ANR. Respondents
Through Mr.Satya Narain, Additional Public
Prosecutor for the State.
Mr.R.P. Luthra, Mr.Saurabh Luthra,
Advocates for respondent No.2.

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 referred to as the “Cr.P.C.”) has been filed by the petitioner for setting aside the order dated 24.11.2015, passed by the learned Metropolitan Magistrate, New Delhi vide which the application of the petitioner for leading evidence and summoning the witnesses was dismissed.

2. Factual matrix, emerges from the record, is that the petitioner is a company and is engaged in the business of developing real estate

projects and deals with other allied activities. Respondent No.2- Ashok Manchanda is the sole proprietor of M/s Capital Builders. The respondent no.2 had filed a criminal complaint under Section 200 Cr.P.C. for commission of the offence punishable under Section 138 of the Negotiable Instruments Act against the petitioner/accused. It was alleged in the complaint that a dispute arose between the respondent no.2-complainant and the petitioner/accused due to which the respondent no.2-complainant preferred a petition OMP No.420/2013. During the pendency of the said petition, the parties entered into a settlement dated 29.10.2013. As per the terms of the said settlement, the petitioner/accused was required to pay Rs.24 crores within 90 days of the said settlement with an interest @ 15% per annum to the complainant. The petitioner/accused failed to arrange sufficient funds in the account maintained by him and as a result of insufficiency of funds, all the six cheques issued in favour of the complainant/respondent no.2 were returned unpaid. The complaint was filed for the return of three cheques of Rs.4 crores each having Nos.000143, 000146 and 000147 drawn on HDFC Bank. A statutory notice dated 10.02.2014 was sent by the complainant, but despite its

receipt, the petitioner/accused failed to make the payment, thus the complaint was filed.

3. During the pendency of the trial, the petitioner/accused moved an application dated 23.10.2015 for leading defence evidence and for summoning eight witnesses. The said application was dismissed by the Trial Court vide impugned order dated 24.11.2015. It was observed by the Trial Court that all the witnesses mentioned in the application were required for producing records to establish the fact which took place prior to execution of settlement agreement dated 29.10.2013. It was further observed that both the parties were well aware of the dispute pertaining to the land in question as well as the pending litigation at the time of entering into the settlement agreement. The operative portion of the impugned order reads as under :

“The examination of the proposed witnesses is not necessary to establish the defence of the accused that proceeding u/s 138 N.I. Act are not maintainable in respect of the impugned cheques by virtue of clause II of settlement agreement and therefore, request of the accused persons to summon the witnesses mentioned in serial no: i to viii is declined.

Accused persons are at liberty to file appropriate application for their examination u/s 315

Cr.P.C.”

4. Feeling aggrieved by the aforementioned impugned order dated 24.11.2015, the present petition has been preferred by the petitioner.

5. Arguments advanced by the learned counsel for the petitioner are that the witnesses cited by the petitioner are necessary for proving the defence of the accused who are either party to the Development Rights Agreement (DRA) dated 05.06.2012 or the official witnesses. The complainant has admitted that the full and final agreement dated 29.10.2013 was executed as there was some dispute with respect to the DRA. It is further argued that there was no legally enforceable debt and the cheques have been misused by the complainant. Counsel for the petitioner wants to further interpret the agreement dated 29.10.2013 by examining those witnesses.

6. In support of the above contentions, learned counsel for the petitioner relied upon judgment of Allahabad High Court in case of ***Asif Hussain v. State of U.P. and another, (2007) 53 AIC 629 (All)*** in which it was observed that the order passed under Section 311 Cr.P.C. refusing to summon witnesses, sought to be called by the accused, is a purely interlocutory order from the point of view of the

accused-applicant and no revision against the same is maintainable.

7. On the other hand, learned counsel for the respondent no.2 has argued that there is no dispute with regard to the agreement dated 29.10.2013 which is a part of the Trial Court record. It is further argued that there is no need to prove the contents of the said agreement by producing oral evidence on the record and the petitioner/accused is trying to delay the proceedings.

8. There is no dispute with regard to law propounded in the judgment cited by the petitioner to the effect that the order passed under Section 311 Cr.P.C. is an interlocutory order and thus revision does not lie against the same.

9. So far as the Full & Final Settlement Agreement dated 29.10.2013 entered into between the petitioner-herein and M/s Capital Builders (respondent no.2-herein) is concerned, a bare perusal of the same shows that the petitioner undertook to pay a sum of Rs.45 crores to the respondent no.2-herein in the manner as provided in the said agreement. As per clause (2) of the said agreement, in case of default in payment in terms of settlement agreement, rights and liabilities of the parties under DRA shall stand revived. As per annexures to the

said settlement, the petitioner-herein issued the post-dated cheques in favour of the respondent no.2-herein.

10. The contention of the petitioner is that the witnesses which it seek to examine are important and material witnesses. It is matter of record that the settlement entered into between the parties is already a part of the record as it has been placed on record by the petitioner/accused. The petitioner seeks to examine eight witnesses to prove the contents of the agreement which cannot be permitted for the reasons that the oral testimony is not required to prove the contents of a document. When it is an admitted case of the petitioner itself that the agreement has already been placed on record, there is no need to examine any witness to prove its contents.

11. I have heard the arguments advanced from either side. The contention made by the counsel for the petitioner is that eight witnesses are required to be examined to interpret the contents of the agreement dated 29.10.2013, although the same is the part of the record.

12. As per Section 91 of the Indian Evidence Act, 1872 (hereinafter referred to as “the Act”), when the terms of an agreement have been

reduced to the form of a document, no evidence shall be given in proof of the terms of such an agreement, except the agreement itself.

Section 91 of the Act is reproduced as under :

“91.Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents.- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.”

13. As per Section 92 of the Act, it provides that when the terms of any contract required by law to be reduced to the form of a document, no evidence of any oral agreement shall be admitted as between the parties to any such document for the purpose of contradicting, varying, adding to or subtracting from its terms.

14. In ***Roop Kumar v. Mohan Thedani, AIR 2003 SC 2418***, the Hon’ble Apex Court clearly defined the scope and object of Sections 91 & 92 of the Act. Relevant para from the judgment reads :

“It is likewise a general and most inflexible rule

that wherever written instrument are appointed, either by the requirement of law or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. it is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence.

In Section 92 the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract; but, no such limitations are imposed under Section 91. having regard to the jural position of Sections 91 and 92 and the deliberation omission from Section 91 of such words of limitation, it must be taken note of that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to in a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing.”

15. As discussed above and the law laid down in ***Roop Kumar’s*** case (supra), this Court is of the considered opinion that whenever a written agreement has been proved or admitted or placed on record,

only documentary evidence can be admitted for proving such an agreement and no oral evidence can be placed on record as barred by Section 91 of the Act. By Section 92 of the Act, the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract. In the present case, the witnesses which the petitioner seek to examine for proving the agreement dated 29.10.2013 which is a part of the record, has already been admitted by the complainant. Thus, it is apparent from the record that there is no requirement to examine the witnesses as sought by the petitioner to prove the contents of the said agreement as being barred by Sections 91 and 92 of the Act. More the reason, the complaint under Section 138 of the N.I. Act was filed in the year 2014; the complainant/respondent no.2 adduced his evidence and after conclusion of his evidence, defence evidence was recorded; statement of the accused under Section 313 Cr.P.C. was recorded on 09.10.2015; application for leading defence evidence was moved on 23.10.2015 which was dismissed by the learned MM vide impugned order dated 24.11.2015. The petitioner/accused has also been given liberty to examine himself under Section 315 Cr.P.C.

16. As discussed above, there is no illegality or infirmity in the order dated 24.11.2015 passed by the Trial Court. Neither any abuse to the process of law nor any failure of justice has been demonstrated. This Court is of the considered opinion that no interference is warranted in the present case under Section 482 of Cr.P.C. The petition is accordingly dismissed.

17. Application Crl.M.A. 18348/2015 is also disposed of.

(P.S.TEJI)
JUDGE

JANUARY 13, 2016
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