

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION. NO. 556 OF 2017

Swetapadma Dhyanranjan Subudhi

And Anr

...Applicants

Versus

Dhyanranjan Subudhi And Anr

...Respondents

Mr.S. S. Redekar a/w Mr.Yogesh Rawool for the Applicant.

Ms.Megha S. Bajoria i/b Mr.Kuldeep S. Patil for Respondent No.1.

Mr.P.H. Gaikwad, APP for Respondent-State.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 21st MARCH 2018

P.C.

1. The present Revision Application is filed challenging the judgment delivered in an Appeal on 17th July 2017, by the Additional Sessions Judge-1, Vasai, thereby dismissing the Appeal filed by the applicant and upholding the order passed by the Judicial Magistrate First Class, Vasai.

2. The short controversy involved in the matter is whether the settlement which was arrived at between the parties before the Mediator in Mediation proceedings on 01st November 2014, which

was reduced into writing and signed by the parties and tendered before the Court would bind the parties, specifically in view of the subsequent development, that one of the parties expressed an intention to withdraw from the consent terms after a gap of almost 18 months.

3. It is not necessary to refer to the chronology of events in details but it is necessary to mention that the proceedings initiated under the The Protection of Women from Domestic Violence Act, 2005 before the JMFC, Vasai, were referred to a Judge mediator and on 01st November 2014, a settlement was arrived at between the parties, which was signed by both the parties and their respective Advocates. Though, the said report was alleged to be forwarded to the Court, it was not found on the record in the case pending before the JMFC. Resultantly, the applicant moved an application before the Hon'ble High Court seeking directions to the lower Court to reconstruct the consent terms and accordingly this Court in Criminal Application No.1162 of 2015, on 21st September 2016, issued direction to the JMFC, Vasai, to make an endeavor to reconstruct the said consent terms as expeditiously as possible and in any case within a period of one month.

On reconstruction of the said consent terms, an

application was moved by the respondent making a motion to withdraw his consent. A pursis to that effect was moved before the Court on 08th September 2016. On 10th November 2016, the JMFC considered the said application and on consideration of the say of the other side, recorded a finding that though the settlement had taken place before the mediator, the settlement was not reduced into writing and was not settled at the instance of the Court. Reference was made to the rules under the Alternative Dispute Resolution Rules, 2006, pertaining to the Mediation and on that basis, the application came to be disposed off with an observation that in the absence of recording of settlement by Court no decree can be passed and the case was directed to proceed on merits. An Appeal was preferred before the Additional Sessions Judge, Mumbai, bearing Criminal Appeal No.1 of 2017.

The Additional Sessions Judge upheld the order passed by the Judicial Magistrate First Class and recorded in the impugned order that the parties have arrived at a settlement before the Mediator voluntarily but afterwards, one of the party do not wish to proceed with the terms drawn before the Mediator and has expressed intention to withdraw from the consent terms. The Court also noted that since the matter was not put up before the Court and the settlement was not accepted by the Court, terms of settlement

signed before the Mediator would not result into a decree and hence the Additional Sessions Judge dismissed the appeal.

4. I have heard the learned counsel for the applicant as well as learned counsel for the respondent. The learned counsel would invite my attention to the Alternative Dispute Resolution Rules, 2006 framed in exercise of power conferred under Rule 10 of the Civil Procedure Code, and Clause-D of sub Section 2 of Section 89 of the C.P.C. framed by the Hon'ble High Court of Judicature at Bombay. The said rules in detail deal with the mediation process and Part II of the said rules deal in detail, with the procedure to be followed by the mediator. Rule 16 of the said Rules of 2012 sets out the role of the mediator being to facilitate the voluntary resolution of dispute between the parties and communicate the view of each party to other and of assisting the parties for resolving the issue. However, perusal of Rule 16 makes it clear that the mediator only acts as a facilitator and he is not supposed to impose any terms of the settlement on the parties. The role of the mediator is further clarified by Rule 17 which provides that the parties should understand that the mediator is only a facilitator and the ultimate decision is to be taken by the parties themselves and the mediator will not and cannot impose any settlement nor he would insist

mediation would see result into settlement. The important Rule with which we are concerned in the present revision is Rule 24 which casts a duty upon the Court to record the settlement and empowers it to pass a decree based on settlement.

Rule 24 : Court to fix a date for recording settlement and passing decree :

(1) Within seven days of the receipt of a settlement, the Court shall issue notice to the parties fixing a date for their appearance which date shall not be beyond 14 days from the date of receipt of the settlement and the Court shall then take the settlement on record.

(2) Thereafter, the Court shall pass a decree in accordance with the settlement, so taken on record, if the same disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising in the suit, the Court shall take on record the settlement on the date fixed and shall include the terms of the said settlement in the judgment, while deciding the other issues.”

5. Thus Rule 24 mandates the Court to fix the date of recording of settlement and passing of decree. As per Rule 24, within seven days of receipt of any settlement, the Court is duty bound to issue notice to the parties fixing a day for recording a settlement, such date not being beyond a further period of 14 days

from the date of receipt of settlement and then the Court shall record the settlement, if it is not collusive. After this process is completed, as per sub-Rule 2 Court would then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

6. What is thus contemplated by conjoint reading of Rule 23 and 24 is that after the settlement agreement is reached between the parties, concerning the terms and conditions, the consent terms drawn before the mediator and the report of the mediation is to be tendered to the Court, who has referred the matter for mediation. Thereafter, on receipt of the report of the statement from the mediator, the Court is expected to issue a notice for the purposes of “Recording of settlement” and after recording such settlement the Court would proceed to pass a decree in accordance with the settlement so recorded. Duty is cast upon the respective Court to record the settlement after it is assured that the settlement is not collusive. Thus, it can be seen that it is not an empty formality that a settlement from the mediator is accepted as it is by the Court. The Court is duty bound to take into ascertain the factum as to whether the settlement has reached between the parties and that it is not collusive. The settlement becomes effective and concludes in a

proceeding only when the Court has given its imprimatur on the settlement and then passes a decree in accordance with law. Until the Court gives its assent by acceptance of the terms of the settlement and passes a decree, a settlement continues to be a contract from which one or all the contracting parties are entitled to withdraw.

7. In view of the specific provision contained in Rule 24, the Court is duty bound to record a settlement and its is only then it can passed a decree based on the said settlement. Merely because the parties have arrived at settlement and have signed terms of settlement would not result into a decree being granted in favour of the parties. Specifically, when one of the parties expresses an intention to withdraw from the said consent terms.

8. Reliance has been placed by the learned counsel on a judgment of *Naresh Chand Jain & Anr V/s. KM Tayal* by the High Court of Delhi delivered on 23rd February 2012. Perusal of the said judgment reveals that the facts itself disclosed that the settlement was arrived between the parties, which was duly signed by the parties on 07th June 2008, then the matter was referred by the referral Court. The matter is taken up for hearing on 11th August

2008, and on that date the parties are being represented through their respective counsels and then Court recorded a positive fact findings, that the parties have settled the dispute. In this background the Court makes a specific observation in paragraph No.6. Since, parties have arrived at the settlement, which was duly signed by them, which settlement was again reiterated on a subsequent date by both the parties through their counsels and there being no dispute about this settlement right up to 29th August 2008, there was a mandate upon a Court to pass a decree on the aforesaid settlement arrived at between the parties. The distinguishing factor in this judgment is that the settlement, which was arrived between the mediator was put up before the Court and Court in fact had recorded positive fact of finding on the issue of the settlement and in this background it was observed by the Delhi High Court that it is not permissible to the parties to walk away from the terms of the settlement, since, it is being arrived by the parties and after following due procedure of notice. The judgment is therefore not being of any assistance to the learned counsel for the applicant.

9. In view of the aforesaid clear position of the law, since in the present the consent terms which were arrived between the parties in the year 2014 were not put up and approved by the Court

for recording the settlement, it can not bind the parties specifically when one of the party is expressing his intention to withdraw from the terms of consent. It is relevant to note that a period of around 18 months has lapsed in between and this Court would not go into the reasons why the consent terms are not in record, however, since a considerable period has passed and since the report of the mediator and settlement terms did not reach finality in terms of the Alternative Dispute Resolution Rules 2006, specifically Rule 24, it would not be binding on the parties. The order/judgment passed by the Courts below cannot be said to be perverse or irrational and rather it takes into consideration the provisions of the Alternate Dispute Resolution Rule, 2006 and implement it in its true spirit. There is no merit in the Criminal Revision Application, hence it is dismissed.

10. It is informed by the parties that the matter is pending before the JMFC since 2010. In the such circumstances, the JMFC is advised to take up the same and deal with the same as expeditiously as possible.

(SMT.BHARATI H. DANGRE, J.)