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

+ CRL.M.C. 1491/2017

MOUTAIN MIST AGRO INDIA P.LTD. .... Petitioner

Through: Mr. Sudhir K. Makkar, Sr. Adv. with  
Ms. Meenakshi Singh, Ms. Saumya  
Gupta and Mr. Sudhanshu Suman,  
Advts.

versus

NCT OF DELHI & ANR. .... Respondents

Through: Ms. Manjeet Arya, APP.  
Mr. Abhishek Singh, Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

% **06.02.2018**

Petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short the Act) against the respondent no.2 before the concerned Metropolitan Magistrate. After trial, respondent no.2 was convicted under Section 138 of the Act.

Respondent no.2 preferred an appeal before the Additional Sessions Judge, Delhi. during the pendency of appeal matter was referred to Lok Adalat where parties entered into a compromise deed dated 12<sup>th</sup> December, 2015. Their statements were recorded by the Plea Bargaining Judge/Lok Adalat Judge, Saket Court, New Delhi. However, no Award was passed. In view of the future clauses of the compromise deed matter was placed before

the Appellate Court for passing appropriate orders. Order dated 12<sup>th</sup> December, 2015 passed by the learned Lok Adalat reads as under :-

“CA 37/14

S. Subramniyam vs. State & Anr.

12.12.2015

Matter has been referred to Lok Adalat.  
Present: Appellant S. Subramniyam in person with counsel  
Sh. Abhishekh Singh.  
Respondent Ajay Mehra in person with proxy  
counsel  
Sh. Rohan Malik  
Sh. Nishant Srivastava, Advocate, Ld. Associate  
Member.

Heard. Records perused.

After detailed discussions and negotiations, the parties have entered into agreement to settle the matter. They have placed on record jointly signed compromise deed dated 12.12.2015.

Separate statement of both the parties have been recorded. Both the parties have agreed to abide by these terms and conditions.

In view of the future clauses of the compromise deed, let the file be placed before Id. Appellate Court on 14.12.2015 for appropriate order.

File be accordingly sent back to the Id. Appellate Court on 14.12.2015 for appropriate order.

Parties are directed to appear before Id. Appellate Court on the said date.

(Vrinda Kumari)  
Ple Bargaining Judge/Lok Adalat Judge,  
Saket Courts, New Delhi/12.12.2015.”

Parties appeared before the Appellate Court on 14<sup>th</sup> December, 2015 when the matter was simply adjourned to 17<sup>th</sup> December, 2015. On 17<sup>th</sup> December, 2015 learned Appellate Court passed the following order:-

“CC 37/14  
S. Subramaniyam vs. State & Anr.

17.12.2015

Present: Sh. Abhishek Singh, ld. Counsel for appellant  
Sh. Rohan Malik, ld. Counsel for respondent no.2.

Ld. Counsel for both parties have submitted that in view of the compromise deed dated 12.12.2015, parties have agreed to settle their disputes finally, by 31.03.2016. It has been further submitted that the matter may be taken up after 31.03.2016 for compromise. Heard. Allowed.

Put up the matter on 04.04.2016, as prayed.

At this stage, an application has been moved on behalf of respondent no.2, for release of a sum of Rs.10.0 lacs deposited by the appellant in the Court, in view of order dated 15.11.2014.

Heard. Considering the aforesaid compromise deed dated 12.12.2015, clause (a), wherein, the appellant has agreed for the same, application stands allowed. Let the amount of Rs.10.0 lacs be released in favour of respondent no.2, as prayed for.

Copy of order be given Dasti, as prayed.

(BHUPESH KUMAR)  
Spl. Judge (PC Act) CBI-01  
Saket Courts, New Delhi/17.12.2015”

A perusal of the order dated 17<sup>th</sup> December, 2015 passed by the Appellate Court shows that matter was adjourned to 4<sup>th</sup> April, 2016. Since payment was not made in terms of the compromise deed the petitioner filed an application before the Appellate Court for hearing the matter on merits. This application has been dismissed by the Appellate Court vide order dated 21<sup>st</sup> January, 2017. Learned Appellate Court has held that, in view of the Award passed by the Lok Adalat the court had become functus officio. The proceedings dated 12<sup>th</sup> December, 2015 of the Lok Adalat were considered as an 'Award'. and parties were left to take other appropriate remedy against the Award, that is, execution in view of the law laid down in K.N. Govindan Kutty Menon vs. C.D. Shaji (2012) 2 SCC 51. That is how petitioner (complainant before the trial court) is before this Court by way of the present petition under section 482 Cr.P.C.

Arguments heard and material placed on record has been perused. The facts involved in Govindan Kutty (Supra) are totally different. In the said case Award was passed by the Lok Adalat. However, in this case, no Award was passed by the Lok Adalat Judge. The only compromise deed was taken on record and the matter was placed before the appellate court for 14<sup>th</sup> December, 2015 for passing appropriate order. The matter was

thereafter deferred to April, 2016.

It is further noted that as per Clause 5 of the compromise deed also, the appeal was to be heard on merits in case of failure of respondent to fulfil the terms of the compromise, that is, making payment of the instalments.

The relevant clause of the compromise deed reads as under :-

“5) Both the parties agree that in the event of non completion of transaction contemplated in this compromise deed, apart from any other remedy in law both the parties would have the right to continue and proceed with appeal no. 37/14 from the stage at which it is pending and get the same adjudicated on merits and the same shall be adjudicated without being prejudiced by the fact of the parties having entered into the present compromise deed.”

For the foregoing reasons, I am of the view that Appellate Court has committed grave perversity by holding that appeal stood disposed of in view of the Award having been passed by the Lok Adalat and the Appellate Court had become functus officio, resulting in miscarriage of justice. Accordingly, impugned order is set aside. Appellate Court is directed to hear the appeal on merits and dispose of the same, in accordance with law.

Parties shall appear before the Appellate Court on 21<sup>st</sup> February, 2018.

Petition is disposed of in the above terms.

**A.K. PATHAK, J.**

**FEBRUARY 06, 2018/ga**