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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) .No.11923 of 2019

P.Mohideen Abdul Kadar ... petitioner/Complainant
power of attorney
A.Syed Mohamed Basith

Vs.

1.M.L.Civil Constructions Pvt. Ltd.,
Rep by its Managing Director
S.Solaiah Pillai,
2.S.Solaiah Pillai

... Respondents/Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order dated 05.12.2017 passed in S.T.C.No.105 of 2016 by the Judicial Magistrate Court No.I, (Fast Track Court at Magisterial Level) Madurai and direct the magistrate to reopen the complaint in S.T.C.No.105 of 2016 with direction.

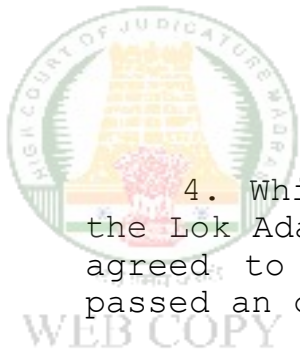
For petitioner : Mr.D.Malaichamy
For R-2 : Mr.R.Venkateshwaran

ORDER

The Criminal Original Petition has been filed to set aside the order dated 05.12.2017 passed in S.T.C.No.105 of 2016 by the Judicial Magistrate Court No.I, (Fast Track Court at Magisterial Level) Madurai and direct the magistrate to reopen the complaint in S.T.C.No.105 of 2016 with direction.

2. Heard both sides.

3. On perusal of the records, the petitioner / complainant initiated proceedings under Section 138 of the Negotiable Instruments Act, as against the respondents in S.T.C.No.105 of 2016 with the allegation that the petitioner intended to purchase one plot in the apartment and paid a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as advance to the second respondent. On verification, the entire construction proposed to construct by the respondents as no valid approval from CMDA authority. Therefore, the petitioner demanded to return back the amount paid by him. In order to repay the amount, the second respondent issued a cheque in the name of Managing Director of first respondent Company, thereafter, which was presented for collection and the same was returned for the reason that "funds insufficient".



4. While pending the trial, the complaint was referred before the Lok Adalat. Before the Lok Adalat, the respondents appeared and agreed to settle the amount. Accordingly, the Lok Adalat has passed an order/ award, dated 11.02.2019, which reads as follows:

"(1).Settlement arrived between the parties. Accused agreed to pay the cheque amount of Rs.30,00,000/- to the complainant in 20 installments.

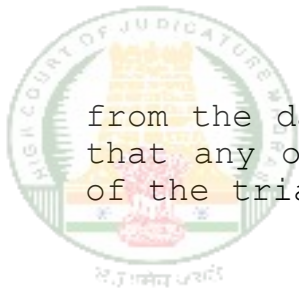
(2).In each installment accused agreed to pay Rs.1,50,000/- on 1st working day of every month from April 2017. At the end of the settlement accused agreed to pay Rs.1,50,000/- as compensation in addition to the cheque amount.

(3).Both parties agreed that if any three consecutive installments is not paid by the accused, complainant is liberty to reopen the case in S.T.C.No.105 of 2016 on the file of the competent Court. The petitioner is at liberty to execute the award in competent civil Court.

(4).We have arrived at settlement terms willing before the Lok Adalat held on 11.02.2017 at Madurai. No coercion of force is applied to arrive at settlement. This case may be disposed of, as settled accordingly."

5. Accordingly, the second respondent is agreed to pay a sum of Rs.1,50,000/- on first working day of every month from April - 2019, at the end of the settlement, the accused agreed to pay Rs.1,50,000/- as compensation in addition to the cheque amount. In clause (3) also stated that if the respondents failed to pay three consecutive installments, the petitioner / complainant is at liberty to re-open the case. Since the respondents failed to pay the amount as agreed in the lok adalat, the petitioner /complainant intended to file a petition to re-open the case before the trial Court. But, the trial Court, by order dated 05.12.2017, dismissed the re-open petition stating that "main case disposed as settled before National Lok Adalat, on 11.02.2017". Against which, the petitioner filed this Criminal Original Petition.

6. Considering the above facts, the trial Court has mechanically dismissed the petition and hence, this Court is inclined to set aside the order dated 05.12.2017 passed in S.T.C.No.105 of 2016 by the Judicial Magistrate Court No.I, (Fast Track Court at Magisterial Level) Madurai. Accordingly, the order, dated 05.12.2017 passed by the S.T.C.No.105 of 2016 by the Judicial Magistrate Court No.I, (Fast Track Court at Magisterial Level) Madurai, is hereby set aside and the Judicial Magistrate Court No.I, (Fast Track Court at Magisterial Level) Madurai, is directed to reopen the complaint in S.T.C.No.105 of 2016 after issuing notice to respondents and complete the trial within a period of six months



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from the date of receipt of a copy of this order. It is made clear that any observation made by this Court should not affect the mind of the trial Court, while disposing the matter.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

Is

To

1.The Judicial Magistrate No.I,
(Fast Track Court at Magisterial Level)
Madurai

2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1CC TO MR.D.MALAICHAMY , Advocate Sr. No.99300

+1CC TO MR.R.VENKATESWARAN , Advocate Sr. No. 99084

Cr1.O.P. (MD) .No.11923 of 2019
18.11.2019

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