

\$~ 25 & 26 (common order)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 5th August, 2019

+ CRL.M.C. 2827/2019 and Crl.M.A.11442/2019

RAJKUMAR KUCHHAL Petitioner

Through: Mr. Ankur Jain, Adv. with
Mr. Aayush Gupta, & Mr.
Rahul Bindal, Advocates

versus

LOYAL LOGISTICS PVT. LTD. & ANR Respondents

Through:

+ CRL.M.C. 2867/2019 and Crl.M.A.11558/2019

RAJKUMAR KUCHHAL Petitioner

Through: Mr. Ankur Jain, Adv. with
Mr. Aayush Gupta, & Mr.
Rahul Bindal, Advocates

versus

ASIAN CARGO MOVERS & ANR Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted two criminal complaint cases (CC Nos.20042/2016 and 18609/2016) against party respondents in these petitions alleging offences under section 138 of the Negotiable Instruments Act, 1881 having been committed by failure to make the

payment of the requisite amounts pursuant to notices on demands that had been issued by the said parties in the wake of return of cheques by the bank upon presentation. It appears that on the basis of pre-summoning inquiry, the respondents herein were summoned as accused in the said two criminal cases. It further appears that midway the proceedings in the criminal complaints, parties entered into settlement agreement in Delhi Mediation Cell on 26.11.2016, the terms whereof would read thus:-

“1) The matters have been amicably settled between the parties for a total sum of Rs.16,00,000/- (Rupees Sixteen Lac Only) in full and final settlement of the present cases.

2) The settlement amount of Rs.16,00,000/- (Rupees Sixteen Lac Only) shall be paid by the accused/respondent to the complainant by way of sixteen post dated cheques of Rs.1,00,000/- (Rupees One Lac Only) each of Punjab National Bank, SME Br., Industrial Area, Patparganj, Delhi-110092 bearing no.512283 to 512298 having date of 10th each English Calender Month, commencing January, 2017 till April, 2018 and the said cheques are being handed over by the AR of the accused persons to the complainant today itself.

3) In case of any default, the present case shall be proceeded further as per law.

4) After receipt/payment of the entire settlement amount, the complainant shall compound the offence and withdraw the present cases from the Ld. Referral Court and accused shall also withdraw its application u/s 340 Cr.P.C.

5) After receipt/payment of the entire settlement amount, there shall remain no dispute due between the parties qua the present case and that none of the parties shall file any other case/claim against each other in future qua the present cases.

6) It is further agreed between the parties that if any cheques/documents/affidavits/receipts/instruments pertaining to each other are lying with them, same shall be returned by them to each other at the time of withdrawal of the present cases or that if the same are not traceable, the same shall not be used any further and that the same shall become infructuous and meaningless.”

2. The settlement agreement dated 26.11.2016 came before the concerned Metropolitan Magistrate on 16.12.2016, when the respondents were present. The presiding officer of the court being on leave, the cases were adjourned for purposes of consideration to 03.01.2017. On the said date, *i.e.*, 03.01.2017, the respondents were absent. The petitioner (being the complainant), however, submitted before the Metropolitan Magistrate that he had received sixteen post-dated cheques in terms of the mediation settlement. Taking note of this submission, the Metropolitan Magistrate avoided passing any adverse orders against the accused for failure on their part to appear and adjourned the matters to 28.07.2017.

3. On 28.07.2017, it is shown from the proceedings recorded by the Metropolitan Magistrate, the counsel for the petitioner informed that cheques which had been presented by that date had failed, no payment having been received through such instruments, though some payment having been remitted by RTGS. The Metropolitan Magistrate noted the information and the absence of the respondents herein and issued non-bailable warrants (NBWs) against them. The subsequent proceedings held (on several dates) right till the impugned order dated 21.01.2019, would show that the duress processes in the nature of

NBWs and proclamations under section 82 of the Code of Criminal Procedure, 1973 were issued, but never executed. The respondents appeared on some dates and, on their oral request and explanation, such process were cancelled, their undertaking to pay in terms of the settlement also being noted and time for compliance with such undertaking also extended, it being admitted case of the petitioner that some further payments were received during that period.

4. Against the above backdrop, the petitioner, as the complainant approached the Metropolitan Magistrate, by an application seeking enforcement of the settlement agreement and recovery of the balance amount thereunder as fine, placing reliance on decision of a division bench of this court reported as *Dayawati vs. Yogesh Kumar Gosain*, (2017) 243 DLT 117 (DB). This request was, however, declined by the Metropolitan Magistrate, by order dated 21.01.2019, she opting instead to take the case to trial adjourning it for framing of notice (under section 251 Cr.P.C.). The petitioner challenged the above mentioned order of the Metropolitan Magistrate in the court of sessions by Criminal Revision Petition Nos. CR. No.29/2019 and CR. No.30/2019 which were dismissed by identical orders passed on 08.04.2019.

5. Against the above backdrop, the petitioner has approached this court, by the petition at hand, seeking intervention, the prayer being that since the dispute had been settled through mediation, the respondents had given undertakings before the Metropolitan Magistrate for due compliance, the amount reflected in such mediation

settlement is bound to be recovered as fine in terms of the ruling in *Dayawati* (supra).

6. The following observations of the division bench in *Dayawati* vs. *Yogesh Kumar Gosain*, (2017) 243 DLT 117 (DB) are germane for decision on the issue raised here:-

“115. There is no legal prohibition upon a criminal court seized of such complaint, to whom a mediated settlement is reported, from adopting the above procedure. Application of the above enunciation of law to a mediation arising out of a criminal case manifests that a settlement agreement would require to be in writing and signed by the parties or their counsels. The same has to be placed before the court which has to be satisfied that the agreement was lawful and consent of the parties was voluntary and not obtained because of any force, pressure or undue influence. Therefore, the court would record the statement of the parties or their authorized agents on oath affirming the settlement, its voluntariness and their undertaking to abide by it in the manner followed by the civil court when considering a settlement placed before it under Order XXIII Rule 3 of the CPC. The court would thereafter pass an appropriate order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the NI Act and the undertakings of the parties. The court taking on record the settlement stands empowered to make the consequential and further direction to the respondent to pay the money in terms of the mediated settlement and also direct that the parties would remain bound by the terms thereof.

116. In having so proceeded, there is a satisfaction of the voluntariness and legality of the terms of the settlement of the court and acceptance of the terms thereof as well as a specific order in terms thereof. Consequently, the amount

payable under the settlement, would become an amount payable under an order of the criminal court.

117. So far as the disputes beyond the subject matter of the litigation is concerned, upon the settlement receiving imprimatur of the court, such settlement would remain binding upon the parties and if so ordered, would be subject to the orders of the court.”

(emphasis supplied)

7. On directions of this court, the petitioner has placed on record copies of the proceedings recorded by the Metropolitan Magistrate in the wake of settlement agreement dated 26.11.2016. On perusal, it is noted that no formal settlements of the parties were recorded nor any inquiry held as to the voluntariness of the settlement agreement nor any effective order passed by the Metropolitan Magistrate at that stage adopting the settlement agreement as the final disposition of the two complaint cases. In these circumstances, there is nothing shown from which it could be inferred that the settlement had received the imprimatur of the court. There is no enforceable order of the Magistrate vis-à-vis the settlement.

8. The court of Metropolitan Magistrate is not a forum for recovery of money. It is a criminal court which is called upon to adjudicate on the complaint alleging offence under section 138 of the Negotiable Instruments Act, 1881. Undoubtedly, the said offence is compoundable. No doubt, if the parties are so inclined the court encourages settlement of dispute in such matters. But then, the court cannot be used by either side to protract and prolong the proceedings as if it were executing the settlement that may have been arrived at

outside the court without the proceedings in the complaint case having been brought to an end in the manner envisaged in *Dayawati* (supra).

9. The fact remains that in the present case no effective order bringing the criminal proceedings to an end within the letter and spirit of *Dayawati* (supra) was ever passed. Since the respondents have failed to abide by the terms of the settlement, they cannot derive any benefit of the settlement agreement. In these circumstances, it is the obligation of the petitioner to prosecute the complaint cases further in accordance with law.

10. The view taken by the Metropolitan Magistrate that the cases have to be brought to trial, thus, cannot be faulted. This court endorses the said view taken by the courts below.

11. Both the petitions are dismissed.

12. This disposes of pending applications as well.

R.K.GAUBA, J.

AUGUST 05, 2019

vk