

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

% **Date of decision: 8th May, 2019**

+ **CS(OS) 113/2016 & IA No.587/2018 (u/O X R-2 CPC)**

SUSHILA BADOLA

..... Plaintiff

Through: Ms. Tara V. Ganju. Adv.

Versus

TUSHAR PATNI & ANR

..... Defendants

Through: Mr. Naveen R. Nath, Mr. Alok
Kumar Pandey and Mr. Siddharth
Agarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff, as per amended plaint dated 16th April, 2018, has instituted this suit against the two defendants namely Tushar Patni and Prashant Mamgain, for (i) declaration as null and void of the Compromise Deed dated 15th November, 2008 obtained dishonestly and fraudulently from the plaintiff; and, (ii) cancellation of the Compromise Deed dated 15th November, 2008.

2. It is the case of the plaintiff in the amended plaint, (a) that the plaintiff on 12th March, 2010 first learnt that a Non-Bailable Warrant (NBW) had been issued against her for 18th March, 2010 in a Criminal Complaint No.21/1/10 filed by defendant no.2 Prashant Mamgain on behalf of defendant no.1 Tushar Patni, of offence under Section 138 of the Negotiable Instruments (NI) Act, 1881 by the Court of Sh. N.K. Laka, Metropolitan Magistrate, Dwarka Courts, New Delhi, for dishonour of a cheque dated 1st December, 2009 for an amount of Rs.75 lacs against the alleged liability of Rs.3 crores; (b) that the plaintiff appeared before the Court on 18th March, 2010 and the NBW was cancelled and the plaintiff

granted bail; (c) that from a perusal of the complaint filed by defendant No.2 Prashant Mamgain on behalf of the defendant No.1 Tushar Patni against the plaintiff, the plaintiff came to know that previously also a complaint of offence under Section 138 of the NI Act was filed before the same Court by defendant No.2 as authorised representative of defendant No.1; (d) that in the previous complaint it was claimed that the defendant No.1, on 10th May, 2006 had given a friendly loan of Rs.2 crores in cash to the plaintiff for a period of six months and the plaintiff had issued a cheque dated 4th October, 2007 for a sum of Rs.2 crores in discharge of the said debt; the said cheque was returned dishonoured leading to the filing of that complaint; (e) that the plaintiff further learnt that the said previous complaint was withdrawn on 15th October, 2009 by defendant No.2 on behalf of the defendant No.1 as the matter has been compromised between the parties vide a Compromise Deed dated 15th November, 2008 and in terms of which compromise, the plaintiff had issued cheques dated 1st December, 2009, 1st March, 2010, 1st June, 2010 and 1st September, 2010 in the sum of Rs.75 lacs each in favour of the defendant No.1; (f) that the plaintiff also found out that one Mr. Vijay Nath, Advocate had appeared as an advocate on her behalf in the previous complaint; (g) that the plaintiff never engaged any such lawyer to represent her in the previous complaint and had never authorised any lawyer to make a statement on her behalf of any compromise having been reached with the defendant No.1; (h) that the plaintiff, on learning as aforesaid, made a written complaint dated 24th March, 2010 regarding the missing eight cheques and misuse thereof by the defendant No.1; (i) that the plaintiff also issued instructions for stopping payment of the remaining cheques; (j) that the plaintiff, on 9th October,

2007 also had informed her Bank regarding the misplaced cheques/leaves from her cheque book and on which the dishonoured cheque for Rs.2 crores, subject matter of the previous complaint had been fabricated; (k) that the plaintiff does not know defendant No.1 and has had no transaction with the defendant No.1; (l) however the signature and thumb impression of the plaintiff was taken on some blank paper by one Mr. Alok Pandey, Advocate, sometime in the month of November, 2008 and the plaintiff now realizes that the said papers have been used for making an application for exemption for appearance of the plaintiff in the previous complaint case and for use as a *Vakalatnama*; (m) that a perusal of the file of the previous complaint case shows that the application for withdrawal of that complaint case was filed with great urgency on 15th October, 2009; (n) that fraud is evident from the fact that the application for withdrawal of the complaint case was filed on 15th October, 2009 on the basis of an alleged compromise of 15th November, 2008; (o) that no mention was made of the compromise on any of the earlier dates in the previous complaint case; (p) that the stamp paper for the Compromise Deed dated 15th November, 2008 was purchased in the name of the plaintiff on 31st October, 2008 but the plaintiff never instructed anyone to purchase any stamp paper; (q) that it is quite evident that the signatures of the witnesses on the Compromise Deed dated 15th November, 2008 have been obtained subsequently; (r) that the daughter of the plaintiff has also confirmed that her signatures were taken on some papers by the defendant No.2 in a very clandestine manner, as the defendant No.2 “is harassing plaintiff’s daughters and also blackmailing them”; (s) that the defendants are similarly extorting monies from one Mr. R.S. Chauhan using similar *modus operandi*; (t) that in the complaint case

filed by the defendants against the said Mr. R.S. Chauhan, approximately 40 hearings in a year were held in the Court of Metropolitan Magistrate Sh. N.K. Laka; (u) that the plaintiff has also filed a complaint before the Bar Council of India under Section 35 of the Advocates Act, 1961 of professional misconduct against Mr. Alok Kumar Pandey, Mr. Vijay Nath and Mr. R.K. Thakur, Advocates, and it was confessed by Mr. Alok Kumar Pandey, Advocate that he obtained signatures on alleged agreement deed and Vakalatnama and asked Mr. Vijay Nath, Advocate to appear on behalf of the plaintiff; (v) that the defendant No.1 is not financially competent to give Rs.2 crores in cash to the plaintiff as loan; (w) that the said amount of Rs.2 crores is not even being reflected in the Income Tax Returns of the corresponding year of the defendant No.1 as loan to the plaintiff; and, (x) that even otherwise, in Indian Law, no loan over Rs.20,000/- can be given in cash.

3. The suit came up before this Court first on 8th March, 2016, when summons thereof were ordered to be issued.

4. The plaintiff applied for amendment of the plaint, even before the defendants filed their written statement and the said amendment was allowed vide order dated 6th April, 2018 and the amended plaint taken on record.

5. A joint written statement has been filed by the two defendants.

6. The suit was listed before this Court on 30th November, 2018 for framing of issues, when the counsel for the plaintiff, on enquiry stated (i) “that the signatures and thumb impression on the compromise deed, copy of which has been filed before this Court by the plaintiff, are of the plaintiff

but the plaintiff in the plaint has explained the circumstances in which the same were obtained”; and, (ii) that the cheque for Rs.2 crores, subject matter of the previous complaint and the four cheques for Rs.75 lacs each and one of which was the subject matter of the complaint case in which NBW was issued and on learning whereof the plaintiff claims to have unearthed the story as set out hereinabove, are all issued from the account of the plaintiff.

7. Finding that the Compromise Deed dated 15th November, 2008, cancellation whereof was sought in this suit, was admittedly placed before the Court seized of the complaint of offence under Section 138 of the NI Act, it was enquired from the counsel for the plaintiff on 30th November, 2018, whether the civil suit under Section 31 of the Specific Relief Act, 1963 is maintainable with respect to a compromise deed forming part of judicial proceedings, or the challenge to the said compromise has to be made in that judicial proceeding only. On request, the hearing on the said aspect was adjourned.

8. On the next date of hearing i.e. 26th February, 2019, the counsel for the plaintiff stated that the file in which the Compromise Deed dated 15th November, 2008 had been filed was not found inspite of best efforts. On request of the counsels, the hearing on the legal question enquired on 30th November, 2018 was adjourned to today.

9. Before proceedings to record the contentions of the counsels, it is deemed appropriate to record the reasons for which it was felt on 30th November, 2018 that the suit for cancellation of a compromise forming part of a judicial proceeding does not lie.

10. Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) provides for compromise of a suit and empowers the Court to record an agreement, compromise or satisfaction of the suit claim or part thereof and to pass a decree in accordance therewith and the Proviso thereto clarifies that where it is alleged by one party and denied by the other party that an adjustment or satisfaction has been arrived at, the Court shall decide the question. Order XXIII Rule 3A of the CPC bars a suit to set aside a decree on the ground that the compromise on which the decree is passed was not lawful. It was felt that (i) the proceedings in a complaint case under Section 138 of the NI Act, though not a suit, are quasi civil in nature and the principles as laid down in Order XXIII Rules 3 and 3A of the CPC would apply; (ii) if it were held that the question of validity of a compromise arrived at in one proceeding were permitted to be gone into in another proceeding, the same would not be conducive to good judicial administration and would result in incongruities; and, (iii) the Court in which the proceeding is pending and is compromised and disposed of, whether it be a Civil Court or a Criminal Court, is best suited and equipped to expeditiously deal with the subsequent challenges to the said compromise, and another Court, even if higher in hierarchy, in a parallel proceeding, is not competent to adjudicate the validity of a compromise arrived at in another Court and the same, if permitted, would open the gates for unscrupulous litigants, after taking advantage and having a proceeding in one Court culminated on the basis of a compromise, not abide by the compromise and make the compromise a subject matter of another proceeding.

11. The counsel for the plaintiff, while arguing on this legal question has argued and in her written submissions submitted, (i) that the purported Compromise Deed dated 15th November, 2008 is a sham document which was allegedly executed between the parties outside the Court and was only filed by the defendants before the Metropolitan Magistrate eleven months later; (ii) that the learned Magistrate before whom the Compromise Deed was produced has neither scrutinized the terms of the purported Compromise Deed nor has recorded satisfaction in regards to the same; (iii) that neither the plaintiff nor the defendants were present in the Court; (iv) that a perusal of the Compromise Deed dated 15th November, 2008 shows that none of the terms thereof have been followed / adhered to by the defendants; (v) that the defendants have not revived the original complaint of dishonour of the cheque of Rs.2 crores, as was provided in the Compromise Deed; instead the defendants have filed three fresh criminal complaints on the basis of the cheques issued for Rs.75 lacs each in payment of total outstanding of Rs.3 crores; (vi) that though the plaintiff filed a petition in this Court for quashing of one of the said complaint case and this Court vide judgment dated 22nd January, 2015 has quashed the said criminal complaint and the said order has attained finality; however, two other complaints are pending; (vii) that Order XXIII Rule 3 of the CPC requires an application in terms thereof to be filed and whereupon only a decree in terms thereof is passed and if any of the party wants to challenge the decree or the compromise deed, has to do so before the same Court; the reason therefor is that the party praying to have the compromise deed set aside will have to satisfy the same Court before whom the compromise was arrived at and filed and which accepted the compromise; (viii) reliance is

placed on *Banwari Lal Vs. Chando Devi* (1993) 1 SCC 581 and *Rajwanti Vs. Kishan Chand Shehrawat* 2009 (113) DRJ 166; (ix) that no withdrawal/compromise or decree under the provisions of Order XXIII of the CPC has taken place in the present case; (x) that a Criminal Court cannot pass a decree and only a Civil Court can pass a decree; reliance is placed on Section 2(2) of the CPC defining a 'decree'; (xi) that a criminal complaint filed under the provisions of Section 138 of the NI Act is a cognizable punishable offence and tried as per the procedure prescribed under the Criminal Procedure Code, 1973 (CrPC); (xii) that settlements under NI Act matters before the Criminal Courts can be either by allowing withdrawal of complaint under Section 257 of the CrPC or by allowing compounding of offence under Section 147 of the NI Act; (xiii) that there is no decree to the satisfaction of the Criminal Court, while disposing of a complaint as settled; (xiv) that an order under Section 257 of the CrPC and/or under Section 147 of the NI Act cannot be considered as a decree; (xv) that in the present case, a simple withdrawal was made by the defendants; (xvi) that the only remedy of the plaintiff is by way of a civil suit; (xvii) that it is only a Lok Adalat award which makes a compromise under Section 138 of the NI Act proceeding, a decree; reliance in this regard is placed on Section 21 and Section 2(aaa) and (c) of the Legal Services Authorities Act, 1987 and *K.N. Govindan Kutty Menon Vs. C.D. Shaji* (2012) 2 SCC 51; (xviii) that only a Civil Court has a power to grant a declaratory relief such as cancellation of documents; and, (xix) that neither the plaintiff nor the defendants were present before the Court of the Metropolitan Magistrate when the compromise deed was filed and no settlement under Order XXIII Rule 3 of the CPC recorded.

12. Per contra, the counsel for the defendants has referred to ***R. Rajanna Vs. S.R. Venkataswamy*** (2014) 15 SCC 471, concerned with the question “can the validity of a decree passed on a compromise be challenged in a separate suit?” and holding that Order XXIII Rule 3A of the CPC clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful and that this implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the Court that passed the decree on the basis of any such agreement or compromise, it is that Court and that Court alone who can examine and determine that question and the Court cannot direct the parties to file a separate suit.

13. The counsel for the defendants has also referred to the dicta of the Division Bench of this Court in ***Dayawati Vs. Yogesh Kumar Gosain*** 243 (2017) DLT 117. The Division Bench was concerned with the legal permissibility of referring a complaint case under Section 138 of the NI Act for amicable settlement through mediation, the procedure to be followed upon settlement and the legal implications of breach of the mediation settlement. It was held (a) that proceedings under Section 138 of the NI Act stand categorized as *quasi* civil; (b) that in order to provide meaningful interpretation and to do complete justice in such proceedings, Criminal Courts are known to have often utilized the principles of CPC in such cases; Supreme Court also has encouraged early settlement in such proceedings; (c) that proceedings under Section 138 of the NI Act have been considered as quasi civil by all the Courts, therefore, in principle, the procedure which applies to recording a settlement in civil cases could guide the procedure to be followed and be applied for recording a settlement

between the parties to a complaint under Section 138 of the NI Act; guidance on this aspect is provided by the provisions of Order XXIII Rule of the CPC and the practice followed by the Civil Courts, upon a compromise arrived at between the parties to a suit; (d) that CrPC as well as NI Act have provided only for compounding of offences; no procedure regarding the manner in which a settlement agreement is required to be placed or considered by the Court has been provided; (e) that though the CPC would have no application to the proceedings which are guided by the CrPC but given the legislative vacuum there appears no reason as to why the principles which apply to consideration of a settlement under Order XXIII Rule 3 of the CPC cannot be applied for consideration of a settlement which is the subject matter of consideration by a Court under Section 320 of the CrPC or Section 147 of the NI Act; (f) that binding the parties to a settlement agreement entered into through a formal mediation process and being held accountable for honouring the same is really enforcing the legislative mandate in enacting Sections 138 and 147 of the NI Act i.e. to ensure an expeditious time bound remedy for recovery of the cheque amounts; (g) that breach of a lawfully entered agreement would not only frustrate the parties to the mediation, but would be opposed to the spirit, intendment and purpose of Section 138 of the NI Act and would defeat the ends of justice; (h) that 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; (i) therefore, the Court would record the statement on oath of the parties or their authorized agents 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; (j) that 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; (k) that 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; (l) that there can be no manner of doubt that once a settlement is reported to the Court and made the basis of seeking the Court's indulgence, the parties ought not to be able to resile from such a position; and, (m) that in the event of either party resiling from the agreed upon settlement which has received the imprimatur of the Court, the party attempting to breach the settlement and undertaking cannot be permitted to avoid making the payment and to violate the undertaking given to the Court.

14. The counsel for the defendants lastly relies on ***Dunia Lal Datta Vs. Nagendra Nath Datta*** AIR 1982 Cal 163 concerned with a suit for declaration that a decree in another suit was void, inoperative and not binding upon the plaintiff. It was held that Section 31 of the Specific Relief Act empowers the Court to cancel a written instrument and that an award and judgment of a Court is not a written instrument.

15. The counsel for the plaintiff has responded to the dicta of the Division Bench of this Court in *Dayawati* supra by contending that the same is in the context of mediated settlement and it is not so here.

16. Though the counsel for the plaintiff in her arguments has repeatedly gone into the merits of the challenge also but the question seized at the moment being only of maintainability of the suit and for which reason the written statement of the defendants also has not been noted hereinabove, I have steered clear from the arguments on merits which are to be considered only in the event of the suit being found to be maintainable in this Court and in the event of the suit being not found to be maintainable, before the appropriate forum.

17. Though the counsels earlier had not filed the documents pertaining to the previous complaint case but have since filed documents and which show (I) that the complaint case came up before the Court of the concerned Magistrate on 24th November, 2007; (II) that the summons were ordered to be issued on 19th March, 2008 for 24th November, 2008; (III) that the accused i.e. the plaintiff was not served for 24th November, 2008 and fresh summons ordered to be issued for 11th December, 2008; (IV) that the file was taken up on 15th October, 2009 on an application for withdrawal of case on being compromised and after recording statements of defendant No.2 herein as authorised representative of the complainant therein i.e. the defendant No.1 herein and of Mr. Vijay Nath, counsel for the accused i.e. the plaintiff as under:

“Tushar Patni Vs. Sushila Badola

15.10.2009

Statement of Shri Prashant Mamgain, AR of complainant

On SA

I have settled the present case with the accused persons. In this respect, a compromise deed bearing signatures and thumb impression of the parties have also been recorded. True copies of the same is filed on record. In respect of compromise, I have received four cheques no.200452, 200453, 200451 and 200454 dated 01.03.2010, 01.06.2010, 01.12.2009 and 01.09.2010 all for Rs.75.00 lacs each drawn on Nainital Bank Limited, Patparganj, Delhi in favour of complainant respectively towards full and final satisfaction of the present complaint. The complaint may be allowed to be withdrawn as compromised.

RO&AC

(Naresh Kumar Laka)

1st LMM/Dwarka Courts

Delhi/15.10.2009

Statement of Shri Vijay Nath, Counsel for accused

WO

I have filed an application on behalf of accused for personal exemption along with Vakalatnama. The matter has been settled between the parties as per compromise deed bearing signatures of both the parties. In view of the compromise, the case may be disposed of.

RO&AC

(Naresh Kumar Laka)

1st LMM/Dwarka Courts

Delhi/15.10.2009”,

the following order was passed:

“Tushar Patni Vs. Sushila Badola

15.10.2009

File taken up today on an application for withdrawal of the case being compromised.

Present: AR of complainant with counsel Shri Alok Kumar Pandey

Shri Vijay Nath counsel for accused

Ld. P.O. has gone to conduct TIP in Tihar Jail.

A compromise deed filed.

Statement of parties recorded.

In view of the statement, the complaint is dismissed as withdrawn as compromised.

File be consigned to record room.

(Naresh Kumar Laka)

1st LMM/Dwarka Courts

Delhi/15.10.2009”

and, (V) that the Compromise Deed placed on record was as under:

“COMPROMISE DEED

THIS DEED OF COMPROMISE IS MADE AT NEW DELHI ON THIS THE 15th day of November, 2008 between Mr. Tushar Patni, S/o Shri M.J. Patni, P.O. Box No.880, Abu Dhabi, UAE through his authorized Attorney Shri Prashant Mamgain, S/o Shri Prithvi Dhar Mamgain, C-2/26, Mangal Apartments, Vasundhara Enclave, Delhi – 110096 hereinafter called the First Party.

AND

Mrs. Sushila Badola, W/o Shri Vishwa Mohan Badola, R/o A-212, Samachar Apartment, Mayur Vihar Phase-I, Delhi hereinafter called the Second Party.

WHEREAS the Second Party took a friendly loan of Rs.2,00,00,000 (Rupees Two Crores Only) from the First Party

on 10.05.2006 on the promise of returning of the same within a period of 6 months. The Second party did not return the aforesaid amount within the stipulated period of 6 months.

WHEREAS the Second Party in order to discharge her liability of the aforesaid amount issued a Cheque in favour of the First Party for a sum of Rs.2,00,00,000/- (Rupees Two Crores Only) bearing No.773308 dated 04.10.2007 drawn on the Nainital Bank Ltd., P-37, Pandav Nagar, Patparganj, Delhi-110092.

WHEREAS the aforesaid Cheque was dishonored by the banker of the Second Party on its presentation for encashment by the First Party. The First Party was constrained to issue a Legal Notice dated 23.10.2007, which was not replied by the Second Party. Subsequently the First Party filed a Complaint Case against the Second Party under Section 138 of the NI Act being Complaint Case No. 2675/01/07 and the same is pending adjudication before the Court of _____Ld. MM, New Delhi and is fixed for hearing on 24.11.2008.

WHEREAS both the parties have old family and friendly terms, have decided to settle the issue amicably outside the Court on the following terms and conditions:-

NOW THIS COMPROMISE DEED WITNESSETH AS FOLLOWS

- 1. That the Second Party has agreed to pay an amount of Rs.3 Crores to the First Party as full and final settlement of the aforesaid Cheque amount within one year on the condition that the First Party will withdraw the Complaint Case in respect of the aforesaid Cheque Amount.*
- 2. That the First Party undertakes to withdraw the Complaint Case No.2675/01/07 in respect of the aforesaid Cheque Amount on receipt of the entire Amount of Rs.3 Crores within the period of one year.*
- 3. That both the parties undertake not to file/institute any proceedings [civil as well as criminal] against each other pertaining to the present Cheque Amount.*

4. *That both the parties further undertake not to defame or propagate anything derogatory against each other in respect of dispute of present Cheque amount.*
5. *That in case the Second Party fails to pay the agreed amount i.e. Rs.3 Crores within the stipulated period as mentioned above, the First Party shall be at liberty to pursue the pending Complaint Case No.2675/01/07 against the Second Party. The First Party shall be at liberty to file/institute civil as well as criminal including registration of FIR against the Second Party in respect of the aforesaid Cheque amount before the competent Court of law.*
6. *That the present compromise has been made without using any undue influence, coercion, force, threat, allurement etc. against each other.*

IN WITNESS THEREOF the parties to this Deed of Compromise have signed and executed the same at New Delhi in the presence of the following witness on the day, month and year mentioned hereinabove:

WITNESSES:

Sd.

*TUSHAR PATNI THROUGH
HIS AUTHORIZED ATTORNEY*

Sd.

(PRASHANT MAMGAIN)

FIRST PARTY

Sd.

(SUSHILA BADOLA)

SECOND PARTY"

18. The doubts expressed by me on 30th November, 2018 and as recorded in the order of that date, as to the very maintainability of this suit

stand reinforced and the arguments aforesaid of the counsel for the plaintiff have failed to remove the said doubts. My reasons therefor are as under:-

- A. Though the complaint case filed by the defendants against the plaintiff was dismissed as withdrawn but recording the statement of the defendant no.2 as attorney of the defendant no.1 and of the counsel for the plaintiff. As per the said statement, the defendants did not simpliciter withdraw the complaint but withdrew the complaint (i) for the reason of the settlement arrived at with the plaintiff; (ii) placing on record the Compromise Deed entered into with the plaintiff; (iii) stating on oath that the said Compromise Deed was bearing the signatures / thumb impression of the parties; (iv) placing on record of the complaint case, a copy of the said Compromise Deed; (v) by affirming before the Court receipt by the defendants of four cheques from the plaintiff in terms of the Compromise Deed towards full and final satisfaction of the complaint; and, (vi) by the advocate for the plaintiff also stating before the Complaint Court that the matter had been settled as per the Compromise Deed bearing the signatures of both the parties and in view of the compromise, the complaint case may be disposed of. The Complaint Court also did not dismiss the complaint as withdrawn simpliciter but recorded that the Compromise Deed had been placed on record and the statements of the parties in support thereof had been recorded and “in view of the statements”.

- B. I have wondered the effect in law, if instead of the complaint case the aforesaid proceedings had been a civil suit i.e. if a civil suit was disposed of as withdrawn in view of a compromise placed before the Court.
- C. It has been held in *Kerala State Coir Corporation Ltd. Vs. Delhi Intercontinental (Hotels) Pvt. Ltd.* (1993) 51 DLT 676, *Hardit Singh Obra Vs. Daljit Singh* (1975) 11 DLT 289 (DB), *Vishwa Mitter Vs. Jit Singh* MANU/PH/1199/1992 and *Gopinathan Nair Vs. Sankaran Madhavan* MANU/KE/0183/1983 that though the final order is of dismissal of the suit as withdrawn but owing to the said dismissal being in lieu of the compromise, the compromise remains enforceable by execution and the plaintiff is not required to seek his remedies by a fresh suit or otherwise. Further, it has been held in *V.N. Sreedharan Vs. Bhaskaran* AIR 1986 Ker 49, *Parvathiyammal Vs. Sivathani Pillai* AIR 1974 Mad 147 and *M.L. Lakshmi Bai Vs. Kendaganna Swamy* MANU/KE/0239/1993 that a compromise decree is passed by a Court upon the exercise of its adjudicatory powers and the resultant decree would be an expression of such adjudication and fall within the ambit of Section 2(2) of the CPC and is thus capable of execution.
- D. A perusal of the Compromise Deed as reproduced hereinabove, placed on record of the complaint case and acting whereon the Complaint Court dismissed the complaint as

withdrawn, also shows the parties to have agreed that in the event of the plaintiff failing to pay the agreed amount of Rs.3 crores as provided therein, the remedy agreed upon by the parties and on which Complaint Court puts its imprimatur was *inter alia* of pursuing the complaint case and which could be pursued only after revival of the same. Thus, it is not as if the compromise divested the Complaint Court of the jurisdiction.

- E. Irrespective of whether the defendants were entitled to file fresh complaints of offence of dishonour of the cheques given under the Compromise Deed or not and irrespective of whether the defendants exercised the option of pursuing the complaint case in which the compromise was filed by seeking revival thereof, the challenge if any to the Compromise Deed filed in a Court even if exercising jurisdiction under the NI Act and CrPC in my opinion, applying the principle of Order XXIII Rule 3 of CPC, would lie in that Court only proceedings wherein culminated accepting the compromise and not before any other Court. Reference can be made to ***Pushpa Devi Bhagat Vs. Rajinder Singh*** (2006) 5 SCC 566, ***Horil Vs. Keshav*** (2012) 5 SCC 525, ***Y. Sreebachi Vs. State of Tamil Nadu*** (2015) 5 SCC 747, ***Morium Bibi Vs. Musst. Showkatara Begum*** 1994 SCC OnLine Cal 44, ***Gopal Lal Vs. Babu Lal*** AIR 2004 Raj 264 (DB), ***Bhai Sarabjit Singh Vs. Indu Sabharwal*** 2015 SCC OnLine Del 14462 and ***Lakshamma Vs. T.H. Ramegowda*** AIR 2015 Kar 204.

- F. It is that Court alone which is competent in law to go into the challenges as are made by the plaintiff in this suit to the Compromise Deed i.e. of (i) of the Court which accepted the compromise, being the Court of the Link Magistrate being not competent to record the compromise; (ii) the defendants having chosen the day when the Link Court was seized of the matter to have the compromise recorded and having avoided having the compromise recorded before the Magistrate which was seized of the complaint case; and, (iii) the advocate who appeared for the plaintiff having not been authorized by the plaintiff.
- G. It would be unfair of another Court to, in exercise of parallel jurisdiction, sit over judgment in a proceeding in another Court. Thus the jurisdiction to enter into the legality of the proceedings before it would be of the same Court in which the compromise under challenge was filed and only, if any remedy is preferred against the order of that Court would this Court as an Appellate/Revisional or Writ Court have jurisdiction to go into the merits of the judgment or findings of that Court.
- H. The reasoning and logic which prevailed with the legislature in inserting Rule 3A in Order XXIII by an amendment of the year 1976 equally applies to a compromise arrived at in a proceeding under Section 138 of the NI Act. It has been held in *Kaushalya Devi Massand Vs. Roopkishore Khore* (2011) 4 SCC 593, *R. Vijayan Vs. Baby* (2012) 1 SCC 260, *G.N. Raju*

Vs. B.S. Jaiprakash 2005 SCC OnLine Kar 728 and *Sunny Vs. State of Kerala* ILR 2018 (1) Ker 554 that an offence under Section 138 of the NI Act is in the nature of a civil wrong with criminal overtones.

- I. Even otherwise, compromises as envisaged under Order XXIII Rule 3 are also permitted in criminal proceedings. Reference in this regard may be made to *Madan Mohan Abbot Vs. State of Punjab* AIR 2008 SC 1969, *Sarvesh Kumar Shukla Vs. State of U.P.* MANU/UP/1305/2007 and *Gulab Vs. Board of Revenue Rajasthan* AIR 2012 Raj 131. The Supreme Court, in *Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Company Pvt. Ltd.* (2010) 8 SCC 24 has held that principles underlying Order XXIII Rule 3 can be applied to mediated settlements as well.
- J. I am unable to find any difference between a mediated settlement and a settlement as recorded above in the complaint case. Thus, from what has been held by the Division Bench of this Court in *Dayawati* supra also, it follows that the challenge to the compromise permitted by law in Section 138 proceedings has to be before the same Court and not by way of a separate suit.
- K. I also concur with the view of the Calcutta High Court. A Compromise Deed aforesaid though a written instrument within the meaning of Section 31 of the Specific Relief Act, once filed in the Court in which disputes to be settled

thereunder are pending and the Court passes orders in terms thereof ceases to have the character of a written instrument within the meaning of Section 31 of the Specific Relief Act and merges with the judicial order. Reference in this regard can also be made to *Salkia Businessmen's Association Vs. Howrah Municipal Corporation* (2001) 6 SCC 688, *Pulavarthi Venkata Subba Rao Vs. Valluri Jagannadha Rao* AIR 1967 SC 591, *Anand Deep Singh Vs. Ranjit Kaur* (2000) SCC OnLine Del 393, *Pratabmull Rameswar Vs. K.C. Sethia (1944) Ltd.* AIR 1960 Cal 702 (DB) and *Banwari Lal* supra. It was well-nigh possible for the parties in their respective statements made before the Complaint Court to have detailed the terms agreed between them instead of filing a written Compromise Deed. If in such a eventuality the statements, essentially an agreement between the parties would have qualified as a judgment or decree of the Court, there is no reason why where the parties instead of having detailed terms of settlement recorded in the Court and which may not only waste the time of the Court but may also result in errors, draw up a settlement and place the same before the Court and make statements in terms thereof before the Court, should be treated differently.

- L. Per Section 257 of the CrPC, a complainant is entitled to withdraw the complaint only if satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused and such an order permitting

withdrawal of complaint is not an order of withdrawal of complaints simpliciter but also an order of acquittal of the accused against whom the complaint is so withdrawn. Reference in this regard may be made to *Sheonandan Paswan Vs. State of Bihar* (1987) 1 SCC 288, *Satish Dayal Mathur Vs. M/s Mackinnan Mackenzie & Company* 1986 SCC OnLine Del 128 and *Provident Fund Inspector, Tirupati Vs. Madhusudana Chaudhary* (2009) 9 SCC 506. Thus, the order of withdrawal of the complaint is not an order of withdrawal simpliciter but also an order of acquittal. The remedy available against the order of acquittal would be under Section 378 of the Cr.P.C. Reference in this regard may be had to *Ramrao Bhikaji Bodhke Vs. Mohammed Ashfaq* 2011 SCC OnLine Bom 1281, *Omana Jose Vs. State of Kerala* 2014 SCC OnLine Ker 6347 (DB), *M.K. Products Vs. Blue Ocean Exports (P) Ltd.* 2016 SCC OnLine Cal 4496, *Subhash Chand Vs. State (Delhi Administration)* (2013) 2 SCC 17, *Satya Pal Singh Vs. State of Madhya Pradesh* (2015) 15 SCC 613 and *Mallikarjun Kodagali Vs. State of Karnataka* (2019) 2 SCC 752.

- M. Such an interpretation is also conducive to keeping the stream of justice clean and orderly and to prevent multiplicity of proceedings and abuse of jurisdictions.
- N. A Civil Court *per se* is not empowered to comment on the proceedings in a Court governed by the CrPC. What the

plaintiff is wanting this Court to enquire into, hold and declare is that the Complaint Court was defrauded into recording a compromise and/or committed an illegality of procedure in recording the compromise and disposing of the complaint and/or that the plaintiff is not bound by the said compromise and for which in my humble opinion the Civil Courts have no jurisdiction. While the High Court is permitted to, under Section 482 of the Cr.P.C., pass any orders to prevent abuse of the process of the Court or to otherwise secure the ends of justice, but the inherent powers can be exercised only when no other remedy is available to the litigant. Reference in this regard may be made to *State of Haryana Vs. Bhajan Lal* 1992 SCC (Cri) 426, *Madhu Limaye Vs. State of Maharashtra* (1997) 4 SCC 551, *S.A. Nanjundeswara Vs. Varlak Agrotech (P) Ltd.* (2002) 10 SCC 249, *Monica Kumar Vs. State of U.P.* (2008) 8 SCC 781 and *Narinder Singh Vs. State of Punjab* (2014) 6 SCC 466.

- O. Placing of a compromise before a Complaint Court cannot be an act of empty formality especially when the Court has acted upon the same and permitted the complaint to be withdrawn and acquitted the plaintiff.
- P. The judicial as well as the legislative policy in relation to complaint cases is also of encouraging settlements. Reference in this regard may be made to Section 147 of the NI Act and to the dicta of the Supreme Court in *Damodhar S. Prabhu Vs.*

Sayed Babalal H. (2010) 5 SCC 663 laying down the guidelines in this respect. Holding that such compromises entered into in such a complaint cases are ineffective and/or unactionable and the only remedy of the party aggrieved from default of the other in abiding by the compromise is to start a fresh litigation would be contrary to the said settled judicial and legislative practices.

Q. I am unable to agree with the contention of the counsel for the plaintiff that the Complaint Court is unable to pass a decree of declaration. The plaintiff is not interested in a decree but in setting aside of the compromise and in the event of the plaintiff approaching the Complaint Court and the Complaint Court finding merit in the challenge of the plaintiff, the Complaint Court in my opinion would be well entitled to set aside the compromise and pass further orders as may be deemed fit and which would have the same effect as the plaintiff is seeking in this Court.

19. Thus, I find the suit on the basis of averments in the plaint to be not disclosing a cause of action and being barred by law and dismiss the suit. However, in the facts, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 08, 2019

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(Corrected & released on 6th June, 2019)