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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 4th September, 2019
+ **CM (M) 1311/2019 and CM APPL. 39711/2019**
BVG INDIA LTD Petitioner
Through: Ms. Kiran Singh and Mr. Ajay Sharma,
Advocates (M: 9810568956).
versus
NAVIN SAINI Respondent
Through: None.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed against the order dated 22nd April, 2019, by which the application under Section 151 CPC filed by the Petitioner/Defendant (*hereinafter*, “*Defendant*”) herein has been dismissed. The short point in this case is whether the disputes between the parties in respect of both agreements i.e. 22nd September, 2009 and 20th June, 2011 were settled vide settlement agreement dated 5th December, 2016 entered into before the Mediation Centre.

2. According to Id. counsel for the Petitioner, the claim of the Plaintiff/Respondent (*hereinafter*, “*Plaintiff*”) was raised initially in a legal notice, wherein certain amounts were claimed under both the agreements. In response thereto, the Defendant had stated that no amounts were due, and in fact, the Defendant was to recover certain amounts from the Plaintiff. Thereafter the suit came to be filed by the Plaintiff i.e. Shri Navin Saini. In the said suit, a settlement agreement, was entered into which reads as under:-

“1. That the respondent shall pay a sum of Rs.5,75,000/- (Rupees five lakh seventy-five thousand

only) in full and final settlement of the claim in the present suit which the petitioner has agreed to accept.

2. That the respondent shall pay the settlement amount of Rs.5,75,000/- through DD on or before 09.12.2016.

*3. That on payment of the entire settlement amount by the respondent there shall not remain any claim of the petitioner against the respondent **in the present suit.***

4. That the petitioner shall claim refund of court fee which respondent shall have no objection.

The parties have entered into the settlement voluntarily and on their own free will without any pressure from any corner."

3. The portion in bold above has been written in hand in the settlement agreement and is initialled by the Plaintiff. The same is, however, not countersigned, either by the Defendant or by the Id. Mediator. Thus, a dispute had arisen as to whether only the dispute in the suit was settled or whether all the disputes arising under both agreements between the parties, were settled.

4. Thereafter, a second suit has come to be filed by the Plaintiff on the basis of agreement dated 20th June, 2011. In the said suit the Defendant contended that all the disputes had been settled as per the settlement agreement. This stand of the Defendant has been rejected by the Id. Trial Court, in the impugned order, wherein it is stated that as per para 1 of the settlement agreement, the settlement is stated to be only in respect of the claim "*in the present suit*". In paragraph 3, the words "*qua the present suit*" also have been added by hand. Further, it is the stand of the Defendant that the amount of Rs. 5,11,266/- claimed by the Defendant by way of set off was never adjudicated in the earlier suit, and the Defendant should be allowed to raise the same in defence in the second suit. In respect thereof, the Id. Trial Court has given liberty to the Defendant to take the said defence

in para 7 of the impugned order, which reads as under:-

“7.0 In view of the above facts & circumstances, it is apparent that the claim of the applicant in set off remained not pressed. Further, in view of the settlement, the suit was dismissed as withdrawn in terms of settlement. In the light of the same, the applicant's prayer cannot be granted. However, in view of the submission of the non-applicant that the applicant may take those pleas (as taken in the set off) in its written statement in the suit filed by him subsequently with respect to his claim regarding agreement dated 20.06.2011, the applicant is at liberty to do so.”

5. Ld. counsel for the Defendant submits that she may be permitted to raise the plea of set off qua the second suit and the period of limitation may be extended.

6. It is noticed that enormous confusion has been caused by both parties as to whether all the disputes between parties were settled or not. The confusion has been confounded by the adding of some words in the settlement agreement signed before the mediation centre. The Ld. Mediator ought not to have permitted such addition by hand and if the same was permitted, it ought to have been added by the mediator with initials of the mediator. The prolongation of the dispute could have been completely avoided if there was clarity in the drafting of the mediation report and the Ld. Mediator had taken care in the preparation of the report. The court which recorded the settlement also ought to have perused the report and clarified the same prior to disposing of the the earlier suit. The present petition is disposed of in the following terms:-

i). In terms of the impugned order, the Defendant is permitted to

raise the plea of set off, however, in so far as the question of limitation is concerned, the Defendant would obviously be entitled to take a stand that in view of the filing of the second suit, it has a fresh cause of action to raise the plea of set off. This issue would be, however, adjudicated by the Id. Trial Court in accordance with law.

ii). In so far as the settlement agreement is concerned, the Defendant would also be entitled to lead evidence to show that in the said settlement, the disputes in respect of the second suit were also settled. Such a plea if raised, would also be adjudicated after taking evidence - both documentary and oral in the matter. No further orders are called for.

7. As a matter of caution, it is directed that Id. Mediators are requested to not allow any handwritten notations or words, in the Mediation/settlement agreements especially if the same are not countersigned/initialled by the Mediator himself, as in the present suit. This has led to complications and subsequent proceedings being filed between the parties. The present order be communicated to all the Mediation Centres in the District Courts as also the SAMADHAN – the Delhi High Court mediation centre. Copy of this order be sent to the worthy Registrar General for communication to the Mediation centre of all the District courts.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 04, 2019/MR