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

+ **W.P.(CRL) 3550/2018 & CRL.M.A. 47748/2018**

SAINIK WELFARE ORGANIZATION (INDIA) Petitioner

Through Mr P.D. Gupta, Senior Advocate with
Mr Atul Gupta, Advocate Mr Abhishek Gupta,
Advocates.

versus

STATE & ORS.

..... Respondents

Through Mr Avi singh, ASC with Mr Tanuj
Bhadana, Advocate for State.
None for respondent nos. 2 to 4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.09.2019

1. Although respondent nos. 2 to 4 were represented by counsel on 22.11.2018 who had accepted notice on their behalf. None is present on their behalf today. Respondent no.2 had also filed an application – which was listed today – seeking anticipatory bail (***BAIL APPLN. 1237/2019***) which was allowed. Respondent no.2 was also aware of the present proceedings but has chosen not to appear in this proceeding.
2. In view of the above, this Court finds no reason to await any representation on behalf of respondent nos.2 to 4.
3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 05.11.2018 passed by the learned ASJ to the extent that it directs the petitioner to refund the money received from the accused in terms of the

settlement arrived between the parties at on 09.03.2015.

4. The petitioner had filed a complaint on the basis of which an FIR No. 89/2014 under Section 420/468/471/34 of the IPC was registered with P.S. Mianwali Nagar.

5. The accused (respondent nos. 2 to 4) had filed applications seeking anticipatory bail in the said matter. During the course of the proceedings the said accused had expressed the desire to settle the disputes with the petitioner. Consequently, the parties were referred to the Mediation Centre, Tis Hazari Courts, Delhi. Before the said Mediation Centre, the concerned parties arrived at a settlement and entered into a settlement agreement dated 09.03.2015. In terms of the said settlement, respondent nos. 2,3 & 4 agreed to pay a sum of ₹4,50,00,000/- to the petitioner in settlement of its claims.

6. Although, part payments were made by respondent nos. 3 and 4, the respondents failed to pay the entire amount as agreed. This led the petitioner to file an application for cancellation of the anticipatory bail granted to the accused solely on the basis of the settlement arrived at between the petitioner and them.

7. The said application was allowed by the order dated 05.11.2018. Anticipatory bail granted to the respondent nos. 2 to 4 was cancelled. However, the Court also directed the petitioner to refund the amount received from the accused within a period of fifteen days. The only reason indicated for the same is that the money was given in terms of the settlement arrived at before the Mediation Centre which has not been fulfilled. Plainly, this cannot be the ground for directing return of the consideration paid by respondent nos. 3 and 4. They had secured an order of anticipatory bail on the basis of the settlement, which they had failed to perform. Clearly, they

were not entitled to any order for refund of the amount paid to the petitioner.

8. This Court is also of the view that the learned ASJ had no jurisdiction to direct refund of any amount paid by respondent nos.3 and 4. The question whether the petitioner is entitled to refund of the amount paid by it and/or damages and/or any other relief in respect of the transaction entered into by it, is not the subject matter of adjudication before the learned ASJ.

9. Accordingly, the impugned order dated 05.11.2018, to the extent, it directs the petitioner to refund the amount paid by respondent nos 3 and 4, is set aside.

10. It is clarified that all rights and contentions of the parties in regard to the amount paid by respondent nos.3 and 4 to the petitioner are reserved.

11. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

SEPTEMBER 23, 2019

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