

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL.M.C. 1948/2020 & CRL.M.A. 13903/2020

Date of Decision: 03.08.2021

IN THE MATTER OF:

M/S DYNAMIC MOVERS INDIA PVT. LTD. & ANR Petitioners
Through: Mr. Paritosh Singh Rajput, Advocate

Versus

AKHIL PODDAR Respondent
Through: Mr. Prashant Mehta & Mr. Gaurav
Malik, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Section 482 Cr.P.C., the petitioners have assailed the order dated 11.09.2020 passed by the learned ASJ-02 Shahdara, Karkardooma Courts, Delhi in Criminal Revision No. 69/2019 whereby he has upheld the order dated 05.08.2019 passed by learned Metropolitan Magistrate-01, District Shahdara, Karkardooma Courts, Delhi in Complaint ID No. 2100/2016; and also imposed a cost of Rs. 10,000/- on the petitioner. The petitioner has also assailed the order dated 23.09.2020 whereby the Metropolitan Magistrate passed directions under Sections 421/431 Cr.P.C.

2. Brief facts, necessary for disposal of the present petition, are that the complainant had advanced a loan of Rs. 62.5 lacs against which, the petitioners had issued 3 cheques which, on presentation, got dishonoured. A legal notice under Section 138 of the Negotiable Instruments Act was issued

to the petitioners as well as other directors namely *Smt. Shivani Grover*/ Accused No. 3 and *Sh. Anil Thukral*/Accused No. 4. On request of the learned counsels for the parties, the trial Court twice vide its orders dated 18.11.2016 and 17.08.2017 referred the matter to the Mediation Centre, Karkardooma Courts. A Settlement Agreement dated 05.09.2017 was drawn between the parties in the present petition which was duly signed by petitioner No. 2 agreeing to pay Rs.18 lacs, in instalments, as the full and final settlement towards the cheques in question. The petitioners paid Rs. 4.75 lacs in instalments but thereafter, did not pay the remainder of the agreed amount. Rather, the present petitioners filed an application on 19.03.2019 stating that the Settlement Agreement was not binding upon them as it was executed by the petitioner No. 2 on the promise given to him by the co-accused *Anil Thukral* that he would pay the entire settlement amount. It was stated that both complainant and *Anil Thukral* played a fraud upon him. The application came to be dismissed by the Metropolitan Magistrate vide order dated 05.08.2019. The Sessions Court upheld the same by passing the impugned order.

3. Learned counsel for the petitioners has raised following contentions:

i) the Settlement Agreement is not binding upon the petitioners as the same was signed by petitioner No. 2 on the assurance of the co-accused *Anil Thukral* that he would pay the entire settlement amount. The instalment totalling to Rs. 4.75 lacs were paid by the petitioners when they received the same from *Anil Thukral*.

ii) The trial Court did not record any statement or undertaking of the petitioner No. 2 in pursuance to the Settlement Agreement and therefore, the same cannot be binding upon the petitioners. Reliance was placed on the decision of Division Bench of this Court in Dayawati v. Yogesh Kumar

Gosain reported as **2017 SCC OnLine Del 11032**.

iii) On petitioner's filing an application dated 19.03.2019, the trial Court kept the matter for framing of notice implying thereby that the application was allowed and thus subsequently, the trial Court having no power of review, could not have dismissed the application on 05.08.2019 which is in the teeth of the decision of the Supreme Court passed in Bindeshwari Prasad Singh v. Kali Singh reported as **1977 AIR SC 2432**.

4. Per contra, learned counsel for the respondent/complainant has referred to the conduct of the petitioners in delaying the trial. It is submitted that having agreed to pay the settled amount, the petitioners could not have renege from it. In support of his submissions, learned counsel for the petitioners has relied upon the following decisions:-

i) Double Dot Finance Ltd. v. Goyal MG Gases Ltd. & Anr. reported as **117 (2005) DLT 330**.

ii) Abhinav Cooperative Group Housing Society Ltd. v. Uppal Engineering Company Pvt. Ltd. reported as **2014 SCC OnLine Del 3304**

iii) Naveen Kumar v. Smt. Khilya Devi & Anr. reported as **MANU/DE/3630/2011**.

iv) M/s Arun International v. State of Delhi & Anr. reported as **2015 SCC OnLine Del 9334**.

v) Ashok Kumar Sehgal & Ors. v. State & Ors. reported as **2018 (4) JCC 2096**.

vi) Chandra Gupt v. Bharat Gupt & Anr. reported as **MANU/DE/2201/2018**.

5. I have heard learned counsels for the parties. The short question to decide in the present case is whether after entering into the Settlement Agreement before the Delhi Mediation centre, Karkardooma Courts and

acting upon it by making part payments, the petitioners could wriggle out of the same.

6. This Court deems it apposite to refer to some of the order sheets of the trial Court as the same would reflect not only the circumstances under which the matter was referred to Mediation, but also the conduct of the petitioners.

7. The matter was listed before the trial Court on 18.11.2016, when on a joint statement made by learned counsels for the parties that the parties were willing to settle the matter through Mediation, then the matter was referred to the Mediation Centre, Karkardooma Courts.

8. After securing bail, the petitioners stopped appearing before the Court and consequently NBWs were issued on 22.04.2017. On an application made, the NBWs were recalled.

9. Again, on 17.08.2017, both the respondent and petitioner No. 2 were present before the Court and it was stated that they were willing to settle the matter through Mediation and the matter was directed to be placed before the Mediation Centre, Karkardooma Courts.

10. On 05.09.2017, the complainant as well as petitioner No. 2 appeared alongwith their counsels before Delhi Mediation Centre, Karkardooma Courts where the Settlement Agreement in question was drawn up and signed. In the Settlement Agreement, it was mentioned that the Mediator held single and joint sessions with the parties. It was also stated that the parties have entered into the settlement out of their own free-will, without any pressure or coercion and without any threat from any corner. It was further recorded that the contents of the Settlement Agreement have been read over and explained to them in vernacular language. It was also recorded that it has been agreed between the parties that they shall be bound by the terms of the settlement. The Settlement Agreement was signed by petitioner

No. 2 in presence of his counsel. As per terms and conditions of the Settlement Agreement, petitioner No. 2 had agreed to pay a sum of Rs.18 lacs to be paid in 18 monthly instalments, as full and final settlement against the claim of Rs. 62.5 lacs. It was agreed that none of the instalments shall be below the sum of Rs.50,000/- and shall be paid beginning October 2017.

11. The matter was listed before the trial Court on 13.10.2017, on which date, the petitioners were represented by his friend, one *Mr. Arimardan*. The Court was apprised of the settlement arrived at between the parties. The aforementioned friend of the petitioner No. 2 was carrying the first instalment of Rs. 50,000/-, which he handed over to the complainant.

12. The petitioner No. 2 stopped appearing before the trial Court and again, NBWs were issued against him on 13.11.2018.

13. The petitioners paid the monthly instalments for some time totalling Rs. 4.75 lacs in the following manner:

DATE	PARTICULARS	AMOUNT
13/10/2017	CASH- Paid by <i>Mr. Arimardan</i> , friend of <i>Mr. Grover</i> before the Court	50,000
10/11/2017	IMPS - Paid by Petitioner no. 1	50,000
11/12/2017	NEFT - Paid by Petitioner no. 1	50,000
10/01/2018	NEFT - Paid by Petitioner no. 1	50,000
09/02/2018	NEFT - Paid by Petitioner no. 1	50,000
26/03/2018	NEFT - Paid by Petitioner no. 1	50,000
26/04/2018	NEFT - Paid by Petitioner no. 1	50,000
08/06/2018	NEFT - Paid by Petitioner no. 1	50,000
12/11/2018	NEFT - Paid by Petitioner no. 1	75,000
	TOTAL	4,75,000

14. The issue whether a party after entering a settlement during pendency of the matter before the Court, can be permitted to wriggle out of it, came up before the Court on number of occasions. In Double Dot (Supra), this Court held as under:-

“10.After deriving benefit under a settlement and making the opposite party change its position, a party cannot turn around and say that the 'accord and satisfaction' is not binding on him. The pre-condition is that the 'accord and satisfaction' should be shown to be voluntary and out of free will. In "Nathani Steels Ltd. v. Associated Constructions" reported in 1995 Suppl. (3) SCC P-324, it was held that once there is a full and final settlement in respect of a dispute or difference in relation to a matter covered under the arbitration clause, such a dispute or difference does not remain an arbitrable dispute and the arbitration clause cannot be invoked in respect thereof even though for certain other matters, the arbitration agreement may remain in subsistence. It was held that unless that settlement is set aside in proper proceedings, it does not lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and to proceed further by invoking the arbitration clause. It was stated that in case it is permitted, the sanctity of the contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take benefit under the settlement and then question the same on the ground of mistake without having the settlement set aside. This principle applies to a plea of 'duress' and 'coercion' also in respect of mutual settlement.

11. In certain cases, the plea of entering into 'settlement' under coercion, mistake, duress or misrepresentation may, however, be examined and accepted even if the facts and circumstances establish that the party repudiating the agreement was under pressure of the other party at the time of entering into settlement and had without delay taken steps to disclaim the accord and satisfaction. Mere financial exigency or economic expediency cannot constitute 'pressure'.

12. The legal position that emerges, therefore, is that the Arbitrator has jurisdiction to adjudicate a dispute in regard to the existence of 'full and final settlement'. In case the plea of 'full and final settlement' between the parties is accepted by the Arbitrator, no Award can be passed in favor of a claimant but in case this plea is rejected, the Arbitrator would be well within his rights to pass an Award in respect of the claims filed before him. The Arbitrator can go into the question as to whether the 'accord and satisfaction' recorded between the parties was voluntary or not inasmuch as 'free consent' remains the foundation of all agreements including the agreement in regard to the settlement of disputes between the parties. However, the plea of coercion, undue influence or duress raised by a party to challenge the 'accord and satisfaction' cannot be accepted lightly merely upon word of mouth. The facts and circumstances, material on record and conduct of the parties at the time of signing the settlement agreement and soon thereafter have to be looked into. It need not be stated that the burden to establish this plea remains on the party which raises it.

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14. If such pleas are sustained, the sanctity and purpose of 'amicable settlements' between the parties would stand totally eroded. Amicable resolution of disputes and negotiated settlements is 'public policy of India'. Section 89 of the Code of Civil Procedure, Arbitration and Conciliation Act, 1996 as well as Legal Services Authorities Act, 1995 call upon the Courts to encourage settlement of legal disputes through negotiations between the parties. If amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlements and making payments there under as a shrewd party after entering into a negotiated settlement, may pocket the amount received under it and thereafter challenge the settlement and re-agitate the dispute causing immeasurable loss and harassment to the party making payment there under. This tendency has to be checked and such litigants discouraged by the Courts. It would be in consonance with public policy of India. The Arbitrator, therefore, had acted against public policy of India by accepting the plea as raised by the respondent No. 1

and thereafter, passing an Award. The view taken by the Arbitrator was absolutely capricious, unfair and unreasonable and as such, the impugned award dated 29.11.2002 passed by him is liable to be set aside.”

15. Again, in Abhinav Cooperative Group Housing Society Ltd. (Supra), it has been held as under:-

“10. It appears from the application filed by the judgment debtor that the judgment debtor is seeking the declaration that mediation conducted in Delhi High Court Mediation and Conciliation Centre be declared as void and in alternative the settlement agreement arrived at Mediation Centre be modified as Mr. Deepak Uppal, representing the judgment debtor, is withdrawing his consent.

11.There are various decisions given by this Court in several cases wherein it has upheld the sanctity of the mediation settlement and the Courts did not allow the parties to back track from the terms and conditions of the settlement on the ground that in case the same is allowed, it will negate the aims and objective of the mediation and defeat the whole process of mediation...”

16. This Court while considering a similar plea in Naveen Kumar (Supra) reiterated its earlier view taken in Double Dot (Supra), and held as under:-

“7. In my view, plea of ignorance as taken by the defendant no. 1 is nothing but an afterthought, in order to back out from the settlement arrived at before the learned Mediator. It appears that she wants to wriggle out of the Settlement Agreement which has been entered into by her before the learned Mediator for obvious reasons. Mediator is an independent person. He has categorically mentioned in his proceeding that parties had voluntarily and of their own free will had arrived at an amicable settlement resolving their disputes. It has been specifically mentioned in the settlement agreement that parties have voluntarily and of their own free will arrived at this

settlement agreement in the presence of Mediator/Conciliator. There is no reason as to why the Mediator would mention that the parties have voluntarily settled the matter had they not done so. Above all, defendant no.1 was assisted by her lawyer who has categorially stated that she had explained the terms of settlement to defendant no.1 in Hindi language.

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12. In my view, if such pleas are sustained the very sanctity and purpose of an amicable settlement through the process of mediation, would stand totally eroded....”

17. Recently, in M/s Arun International (Supra), it has been held as under:-

“7. It is settled law and even otherwise the settlement of the Mediation Cell is deemed to be a decree and cannot be challenged.

8. Under these circumstances, the impugned order is illegal and contrary to law firstly once the matters are settled before the mediation centre, the trial court would have insisting the respondent No.2 to pay the amount secondly, the decision of Dashrath Rupsingh Rathod referred by the trial court does not help the case of respondent No.2 as the proceedings have gone to stage of Section 145(2) of the Act. The notice of the abovementioned petitions were issued but despite of service, no one appeared on behalf of respondent No.2.”

18. In Ashok Kumar Sehgal (Supra), it has been held as under:-

“13. It is an admitted position that possession of the second floor was handed over to respondent Nos. 2 & 3, though through police. Further it is not in dispute that petitioner No. 2, in terms of the Settlement Agreement, also filed an application seeking to withdraw the complaint filed by her under Section 138 of the Negotiable Instruments Act against respondent Nos. 2 & 3. Construction of both the second and third floor is complete. Petitioners have performed their part of the obligation, however, respondent Nos. 2 & 3 are attempting to wriggle out of their obligation under the said Settlement Agreement, which cannot be permitted.”

19. In Chandra Gupt (Supra), it has been held as under:

“22. Though the plaintiff has not filed before this Court the orders of the Court in which the suit was pending after the date when settlement was so reached before the Mediation Centre of the District Court but the position in law does not admit of any ambiguity. This Court in Surinder Kaur Vs. Pritam Singh (2008) 154 DLT 598 has held (i) by amendment of the year 2002 to the CPC, Section 89 provides for settlement of dispute outside Court; (ii) that Section 89(2) mandates the Court to effect a compromise between the parties where the matter has been referred to mediation and has been compromised; and, (iii) once the matter has been compromised as per terms contained in the settlement before the Mediator and of which the Mediator has sent a report, decree in terms thereof is to be passed. Yet again, the Division Bench of this Court in Naresh Kumar Vs. Ashok Arora MANU/DE/9778/2007 held (a) if settlement is arrived at before the mediator, one cannot back out; (b) if such an attempt is permitted, it would negate the very purpose for which Section 89 has been inserted by the Parliament by way of amendment to the CPC; (c) if the Courts were to start entertaining pleas to back out of the settlement arrived at before the Mediation Cell in terms of Rules 24 & 25 of the Mediation and Conciliation Rules, 2004, the sanctity and purpose of amicable settlement between the parties would stand totally eroded; (d) amicable resolution of disputes and negotiated settlement is public policy in India; (e) Section 89 of the CPC, Arbitration & Conciliation Act, 1996 as well as Legal Services Authorities Act, 1995 call upon the Court to encourage settlement of legal dispute through negotiations between the parties; (f) if amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlement and making payment thereunder as a shrewd party, after entering into negotiated settlement, may take the amount received under it and thereafter challenge the settlement and re-agitate the dispute causing immeasurable loss and harassment to the party making payment thereunder; and, (g) this tendency has to be checked and such litigants discouraged by the Courts.”

20. During arguments, both the learned counsels have relied upon the decision in Dayawati (Supra), where a Division Bench of this Court considered the legal permissibility of referring a complaint case under Section 138 of the NI Act for amicable settlement through Mediation; and also, the procedure to be followed upon the settlement as well as the legal implications on breach of the terms of the settlement. It is worthwhile to note that in the present case, the settlement was arrived at before the decision in Dayawati (Supra) was pronounced.

21. The matter was referred to Mediation Centre twice, on request made on behalf of the present petitioners as well as the complainant. The petitioners participated in the Mediation proceedings along with their counsels. The Mediation process was voluntary. After fully understanding its true import and consequences, the petitioner No. 2 reached a final settlement and signed the same. On the next date, the petitioner No. 2 deliberately did not appear before the trial Court and rather appeared through his friend who, handed over the first instalment of Rs. 50,000/- to the complainant in Court. The petitioner acted on the Settlement Agreement and continued to act upon it for next thirteen months when the ninth instalment of Rs. 75,000/- was paid.

22. It is significant to note that the application dated 19.03.2019 was filed by the petitioners after a delay of 18 months. The trial Court noted that the application was filed through the same counsel who had also signed the Settlement Agreement. The application did not contain any averments about the Settlement Agreement not binding upon the petitioners for the reason that no statement was recorded before the Court. On the contrary, it was averred that the petitioners could not honour the settlement as co-accused *Anil Thukral*, who had agreed to pay the entire settled amount, backed out

from his words.

23. Even otherwise, the averments in the application are untrue as *Anil Thukral* was not even present when the request for Mediation was made before the trial Court. *Anil Thukral* did not participate in the Mediation proceedings and also did not sign the Settlement Agreement. There was no averment in the Settlement Agreement to the effect that the petitioners would pay the instalments after receiving the same from *Anil Thukral*. This averment was made for the first time after a gap of eighteen months.

24. Even a perusal of the order passed on the application filed by the petitioners before the learned Metropolitan Magistrate on 19.03.2019 would show that no order was passed on the same and the matter was adjourned for framing of notice but no notice was framed. The application came to be dismissed on 05.08.2019. As such, the contention raised that after passing the order on 19.03.2019, no order on 05.08.2019 could have been passed, is meritless and is rejected.

25. This Court is constrained to note that the present case relates to the year 2016 for a complaint filed under Sections 138, 141 and 142 of the NI Act. On 27.04.2016, after recording the pre-summoning evidence, the trial Court had summoned the petitioners. The Settlement Agreement was executed on 05.09.2017 and thereafter, the matter has not proceeded. Time and again, on many occasions, the petitioner No. 2 did not appear before the Court and twice NBWs were issued against him which were later recalled on his undertaking to appear regularly before the Court. The petitioners have stalled the proceedings for more than five years. This Court is of the view that such a conduct should be viewed and dealt very strictly. Having reached a conclusion that the impugned orders do not suffer from any illegality, infirmity or perversity, the petition is dismissed with cost of Rs.10,000/- to

be deposited by the petitioners, with the *Delhi High Court Bar Association Pandemic Relief Fund, UCO Bank, A/C No.15530110152195, IFSC Code UCBA0001553* within a period of two weeks from today.

26. A copy of this order be communicated electronically to the concerned trial Court as well as uploaded on the internet.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 3, 2021

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Click here to check corrigendum, if any