IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP No.1440 of 2019(O&M)
Date of Decision: March 24, 2022

Nisha Rani Chhura ...Petitioner

Versus

Jaswant Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Rajeshwar Singh Thakur, Advocate
for the petitioner.

Mr.Kamal Chaudhary, Advocate
for the respondent.

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HARINDER SINGH SIDHU, J.

The petitioner Nisha Rani has filed this petition for proceeding under the Contempt of Courts Act against the respondent Jaswant Singh for willfully and intentionally violating the settlement/agreement dated 08.11.2017 (Annexure P-3) on the basis of which the order of acquittal dated 28.03.2018 (Annexure P-4) was passed by the Court of Ld. Additional Sessions Judge, Chandigarh in an appeal against conviction under Section 138 of the Negotiable Instruments Act.

Brief facts of the case are that the petitioner is owner of 5 Bigha 5 Biswas and 14 Biswasi plot comprised in Khasra No.500 (983/1980 Share), 10/490 (1573/3480 Share), 494 (1/2 Share) and in 1174/495 and

1176/495 (2 biswa) at village Barr Godam, Tehsil Kalka, District Panchkula (Haryana). After constructing a building on the aforesaid land, she started running her business in the name of Nisha Rani Chhura Agro Mushroom Farm, Barrgodam, Tehsil Kalka, District Panchkula, Haryana. The aforesaid Agro Farm was for growing the mushrooms on the said land/plot alongwith Plant, Machinery and stocks. The plant and machinery were free from all encumbrances. For running the said Plant the petitioner had taken loan from Punjab National Bank, Sector 16-D, Chandigarh, on two occasions. On one occasion it was for a sum of Rs.85,00,000/- and on other occasion it was for a sum of Rs.40,00,000/-. The petitioner paid some of the loan amount. For obtaining the loan the petitioner had mortgaged the plant as well as House No.1047, Sector 4, Panchkula with the Bank.

The petitioner could not run the plant. She entered into an agreement to sell dated 03.06.2014 (Annexure P-1) with the respondent. As per the agreement the total sale consideration of the plant and machinery was fixed at Rs.1,87,50,000/-. Since there was an outstanding loan of Rs.1,11,65,069/-, therefore, it was agreed that the respondent will get the property released after paying the loan amount to the Bank. The respondent was required to pay the balance sale consideration to the petitioner. The respondent was also handed over the operational possession of the Unit on 27.3.2014 i.e. before the execution of the agreement to sell. However, the respondent did not make the payment as per the agreed time schedule. A cheque of Rs.18,85,000/- issued by him was dis-honoured. The respondent again issued two cheques one bearing No.638687 dated 20.10.2015 for a sum of Rs.5,00,000/- and another cheque for a sum of Rs.15,92,000/-. This amount of Rs.20,92,000/- was agreed to be paid by the respondent against the outstanding amount of Rs.18,85,000/- regarding which the cheque earlier issued by the respondent had bounced. These later cheques were also dis-honoured.

The petitioner initiated the proceedings under Section 138 of the Negotiable Instruments Act against the respondent. Since the respondent failed to pay the cheque amounts even during the pendency of the proceedings the respondent was convicted by the Ld. JMIC, Chandigarh, vide judgment dated 01.08.2017 (Annexure P-2). Respondent challenged his conviction in appeal before the Ld. Additional Sessions Judge, Chandigarh. There a compromise dated 08.11.2017 (Annexure P-3) was entered into between the petitioner and the respondent. The respondent agreed to pay a sum of Rs.25,00,000/- against the liability of the two cheques.. The respondent paid Rs.25 lacs to the petitioner and he was acquitted by the Ld. Additional Sessions Judge, Chandigarh vide judgment dated 28.03.2018 (Annexure P-4).

It is the case of the petitioner that vide the agreement dated 08.11.2017, it was further agreed between the parties that the respondent would get the sale deed executed of the plant and machinery after clearing the bank liability by 26.04.2018. It was further agreed that the respondent would get the house of the petitioner, which had been mortgaged for obtaining the cash credit limit, released from Punjab National Bank, Sector-16D, Chandigarh As per the petitioner after obtaining the order of acquittal dated 8.3.2018 the respondent had not complied with the other terms and conditions of the settlement/agreement dated 08.11.2017 regarding getting released the properties of the petitioner from the Bank.

In response, the respondent filed CM-2766-CII-2021 for directing the petitioner to perform her part of agreement on the ground that the respondent has cleared Bank dues and has also arranged the funds for execution of the sale-deed. The respondent is repeatedly approaching and requesting the petitioner to get the sale-deed executed in favour of the respondent as per the settlement dated 08.11.2017 (Annexure P-3), but the petitioner has not been coming forward to execute the sale-deed. It is alleged that the petitioner has filed another application showing another sum of Rs.2,35,000/- due to be paid by the respondent to her. It is further the case of the respondent that to show his bonafide, he has prepared a demand draft of Rs.2,35,000/- (Annexure R-2) to be handed over to the petitioner. Though, he suffered loss of about Rs.56,00,000/- in the crops of Mushroom due to lockdown, but still he arranged the money and cleared the liability towards the Bank. He has also annexed a certificate issued by the Bank dated 03.07.2020 (Annexure A-1) in this regard.

Ld. Counsel for the petitioner has stated that on account of the failure of the respondent to abide by the agreement the petitioner has had to face litigation and has incurred lot of expenses. She received a notice from the Civil Court, Kalka, on a number of occasions on account of labour dispute. A Civil Suit for permanent injunction was filed against the petitioner by one Sanjeev Kumar at Kalka. She had to file a suit for mandatory injunction against the respondent to hand over the possession of the plant as he was neither paying the amount nor getting the sale-deed registered, which suit is still pending. It is also stated that the respondent on a number of occasions had failed to pay the electricity bills, and the petitioner had to pay the same. The petitioner also paid an amount of Rs.2,35,000/- to the Banks to avoid the loan account being declared as 'NPA'. Hence, the respondent is liable to pay all the expenses along with interest @ 18% per annum.

The case of the respondent is that he has cleared the loan amount due to the Bank and hence as per the agreement the petitioner is required to execute the sale deed in his favour. The petitioner contends that the respondent had not abided by the terms of the agreement because of which she had to undergo lot of expenses, face litigation and the mental and physical stress for which the respondent is liable to compensate her.

During the course of the hearing repeated efforts were made to persuade the parties to arrive at a compromise. The respondent had also agreed to pay some amount to compensate the petitioner for the expenses she had to undergo on account of the initial failure of the respondent to strictly adhere to the terms of the agreement. But the parties could not arrive at any settlement. Because of their failure to arrive at an agreement there is a stalemate. The sale deed has not been executed. Both parties are suffering losses. In this situation, the Court can do nothing but only hope and expect that good sense dawns on them.

In view of the facts there does not appear to be a case to proceed further under the Contempt of Courts Act against the respondent.

The Rule is discharged.

This petition is disposed of with liberty to the parties to pursue any other appropriate remedy for redressal of their grievances with regard to the agreement.

March 24, 2022 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No