



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

CRL.M.C. 1352/2021

Date of Decision: 18.02.2022

IN THE MATTER OF:

RIKTA BAJAJ

..... Petitioner

Through: Ms. Aishwarya Rao, Advocate with
petitioner in person

Versus

THE STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Ashok Kumar Garg, APP for State
Mr. Chandan Bhatia, Advocate for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking setting aside of the order dated 12.04.2021 passed by the learned MM (NI Act), North-West District, Rohini Courts, Delhi in CC Nos. 19390-19400/2016.

2. Ms. Aishwarya Rao, learned counsel for the petitioner submits that the present case arises out of complaints filed under Section 138 of the Negotiable Instruments Act, 1881 on behalf of the petitioner. It is submitted that respondent No. 2 had issued 11 cheques totaling to Rs.32,00,000/-, which on presentation got dishonored. She further



submits that the present matter relates to the year 2016 and the trial has not proceeded as respondent No. 2 for one reason or the other has deliberately delayed the trial. She submits that on the pretext of settling the matter, respondent No. 2 has continuously remained absent from the Trial Court and resultantly proceedings under Section 82 Cr.P.C. were initiated against him and he was declared an 'absconder' on 06.10.2018. It is submitted that thereafter respondent No. 2 preferred an application under Section 70(2) Cr.P.C. seeking cancellation/stay of the order dated 06.10.2018, whereby he was declared an 'absconder', which also came to be dismissed by the Trial Court on 10.02.2021. She submits that subsequently, respondent No. 2 approached this Court by way of CRL M.C. Nos. 459/2021 & 517-526/2021 seeking setting aside of the orders dated 06.10.2018 and 10.02.2021, which also came to be dismissed by a Coordinate Bench of this Court vide detailed order dated 22.03.2021.

She submits that later, the Trial Court while erroneously relying upon Office Order No. 256/RG/DHC/2021 dated 08.04.2021 issued by this Court, stayed its own order dated 06.10.2018 by completely ignoring the order 22.03.2021 passed by this Court. It is also submitted that the parties have also entered into a Settlement Agreement dated 09.05.2019 before the Delhi High Court Mediation and Conciliation Centre, whereby respondent No. 2 had agreed to pay the outstanding amount of Rs.32,00,000/- however, only part payment of Rs.8,00,000/- has been made to the petitioner. It is thus submitted that respondent No. 2 had failed to honor its commitment. Lastly, while commenting on the conduct of respondent No. 2, it is submitted that respondent No. 2 is guilty of evading the process of law and delaying the trial.



3. Learned counsel for respondent No. 2 has supported the impugned order and submits that respondent No. 2 could not honor the settlement on account of financial constraints. He further submits that after passing of the impugned order dated 12.04.2021, whereby the order dated 06.10.2018 declaring respondent No. 2 as an 'absconder' was stayed, respondent No. 2 has appeared before the Trial Court. He, on instructions, submits that respondent No. 2 undertakes to appear before the Trial Court as and when the matter is fixed. He also submits that in this regard, respondent No. 2 shall also file a written undertaking in the form of an affidavit before the Trial Court within a period of two weeks from today.

4. I have heard learned counsels for the parties and have also gone through the case records.

5. As noted hereinabove, the present case emanates from complaints filed under Section 138 of the Negotiable Instruments Act, 1881 on behalf of the petitioner. The respondent No. 2 had issued 11 cheques totaling to Rs.32,00,000/-, which on presentation got dishonored and the petitioner approached the concerned Court by way of CC Nos. 19390-19400/2016. On 18.03.2017, an application seeking exemption was filed on behalf of respondent No. 2 and at joint request of the parties, the matter was referred to *Lok Adalat* which was scheduled for 08.04.2017. However, on 08.04.2017, respondent No. 2 did not appear. Thereafter, on 03.06.2017, another application seeking exemption was filed on behalf of respondent No. 2 and the matter was referred to Mediation, which could not fructify for want of respondent's No. 2 appearance.



On noticing respondent's No. 2 continuance non-appearance before the Court, NBWs were issued against him on 17.10.2017 and subsequent to which proceedings under Section 82 Cr.P.C. were initiated against him on 07.02.2018. The respondent No. 2 was declared an 'absconder' on 06.10.2018. Thereafter, respondent No. 2 approached this Court by way of CRL.M.C. 6613/2018 seeking setting aside of the order dated 06.10.2018 and the parties were referred to the Delhi High Court Mediation and Conciliation Centre. Noticing the conduct of respondent No. 2, CRL.M.C. 6613/2018 came to be dismissed by a Coordinate Bench of this Court vide order dated 01.02.2021. Subsequently, BAIL APPLN. 428/2021 came to be filed before this Court on behalf of respondent No. 2 seeking anticipatory bail, which was also dismissed as withdrawn vide order dated 08.02.2021. Respondent No. filed an application under Section 70(2) Cr.P.C. before the Trial Court seeking setting aside/stay of the order dated 06.10.2018, which also came to be dismissed on 10.02.2021. Respondent No. 2 again approached this Court by way of CRL M.C. Nos. 459/2021 & 517-526/2021, which again came to be dismissed vide order dated 22.03.2021 and the orders dated 06.10.2018 and 10.02.2021 declaring respondent No. 2 as an 'absconder' were upheld.

6. A perusal of the impugned order dated 12.04.2021 would show that the Trial Court, while granting stay on the order dated 06.10.2018 erroneously relied upon Office Order No. 256/RG/DHC/2021 dated 08.04.2021, whereby it was directed that on non-appearance of the parties, no adverse orders be passed against them. It is noted that the said Office Order was passed in continuation of its earlier Office Order dated 20.02.2021. The benefit of the aforesaid Office Order cannot enure in



favor of respondent No. 2 as he was declared an ‘absconder’ on 06.10.2018 i.e., much prior to 20.02.2021 and also in view of the fact that the order dated 06.10.2018 came to be upheld by this Court on 22.03.2021. The respondent’s No. 2 earlier petition before this Court also came to be dismissed while noting his conduct in delaying the trial.

7. In view of the aforesaid narration, there is no gainsaying that the impugned order dated 12.04.2021 passed by the learned MM is not only *ex facie* bad in law but also in the teeth of the order dated 22.03.2021 passed by this Court and was passed on an erroneous reading of the aforesaid Office Order. During the course of submissions, it is also informed that an earlier petition filed on behalf of respondent No. 2 was dismissed with a direction to respondent No. 2 to pay cost of Rs.10,000/- to the petitioner, which has not been paid till date.

8. Learned counsel for respondent No. 2 prays that the impugned order be not set aside. He, on instructions, submits that respondent No. 2 undertakes to pay the previous costs as well as further costs as may be imposed by this Court. The said undertaking given on behalf of respondent No. 2 is taken on record and he is bound by the same.

9. Although, this Court is inclined to set aside the impugned order dated 12.04.2021, however keeping in view the peculiar facts and circumstances of the case; the fact that the setting aside of the impugned order would further delay the trial; and that respondent No. 2 has undertaken to regularly appear before the Trial Court, the present petition is disposed of with the following directions:

- (i) The respondent No. 2 shall file a written undertaking in the form of an affidavit to the effect that he



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shall appear before the Trial Court as and when the matter is fixed. The undertaking be filed within a period of one week from today.

(ii) The respondent No. 2 shall pay an additional cost of Rs.40,000/-, as well as the previous imposed cost of Rs.10,000/-, totaling to Rs.50,000/-, to the petitioner within a period of ten days from today.

10. Considering that the present case pertains to the year 2016, the Trial Court is requested to expedite the trial and conclude the same preferably within a period of one year from the next date.

11. A copy of this order be communicated electronically to the concerned Trial Court for information.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 18, 2022

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