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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 31st August, 2022**Pronounced on: 03rd September, 2022**

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CRL.M.C. 3333/2021 & CRL M.A. No.20315/2021**RAJA ARORA & ANR.**

..... Petitioners

Through: Mr.Vinay Kr.Garg, Senior
Advocate with Mr.Jagdish Sethi,
Mr.Parv Garg, Mr.Pawar
Kulshrestha and Mr.K.S.Rekhi,
Advocates.

versus

MS. MEERA ARUN & ORS.

..... Respondents

Through: Mr.Akshat Gupta and Mr.Pranav
Jain, Advocates for R1.

CORAM:**HON'BLE MR. JUSTICE YOGESH KHANNA****YOGESH KHANNA, J.**

1. This petition is filed for impugning the order dated 20.11.2021 passed by learned MM (NI Act)-02 (Central), Tis Hazari Courts, Delhi thereby dismissing an application filed by the petitioner under Section 431 Cr.P.C. read with Section 421 Cr.P.C. seeking enforcement of mediation settlement dated 19.02.2019.

2. The parties executed a settlement agreement on 19.02.2019 before the mediation centre in order to settle all their pending disputes in various fora and pursuant thereto specific statements of respondent no.1 and her



husband were recorded by learned MM in terms of judgment passed in *Dayawati vs. Yogesh Kumar Gosain* (2017) 243 DLT 117. Late Shri A.A. Murugaiah, husband of respondent no.1 also gave personal guarantee for compliance/ payment as per the settlement agreement dated 19.02.2019. However, after paying few installments the respondent failed to fulfill their obligation and resultantly committed its breach. Subsequently, to enforce the abovementioned settlement agreement, the petitioner filed an application on 23.08.2021 under Section 431 Cr.P.C. read with Section 421 Cr.P.C. praying interalia for attachment of shares and properties of respondents i.e., ABC Hospital, Assured Best Care Hospital Private Limited, No.1, Annamalia Nagar Main Road. Near Karur Bypass Road, Trichy, in light of the guidelines given in *Dayawati* (supra). The said application dated 23.08.2021 was dismissed by the learned MM vide impugned order dated 20.11.2021.

3. It is submitted the learned MM erred in the impugned order *a)* by limiting her jurisdiction to only the proceedings pending before her prior to the execution of settlement dated 19.02.2019; and *b)* the learned MM erred in saying the application is premature.

4. I have perused the mediation agreement dated 19.02.2019 annexed as annexure A of this paper book. It refers to three set of cases referred to in Mediation being *a)* 31 cases under Section 138 Negotiable Instruments Act pertaining to 31 cheques for a total amount of Rs.1,34,07,966/- each delivered by the respondent to the petitioner for discharge of commercial liability; *b)* 18 other similar complaints pending between the parties but in a different court and *c)* a decree dated 16.11.2016 passed by the High Court of Delhi in case bearing CS(OS) No.3402/2015 passed in favour of



the complainant and transferred to the Madras High Court for its execution.

5. The parties settled in terms of clause Nos.1 to 10 of the mediation agreement and the respondent were to pay for 31 complaints an amount of Rs.1,34,07,966/- latest by 31.07.2019 with 10% interest per annum till 31.07.2019; for 18 criminal complaints Rs.53,03,127/- with 10% interest till 31.07.2019 and Rs.3.00 crores in six half early installments of Rs.50.00 lacs each from 30.08.2019 to 28.08.2022. In case of any delay the rate of interest was to be increased to 14% on the delayed period but in any case the entire payments were to be made prior to 28.02.2022. As per clause 9 of the agreement Shri A.A. Murugaiah took personal liability for compliance and payment as agreed in the settlement. The respondent no.1 herein was also present in mediation proceedings; signed the mediation agreement and even gave a statement before the Court on 19.02.2019 which read as under:

*"I am one of the accused in the present matter. I state that the matter has been settled between the parties before Mediation Centre today i.e. 19.02.2019. The mediation settlement is now Ex.P1 bearing my signature at point B on all three pages. I state that said settlement has been entered into by me of my own free will after fully understanding the contents and implications thereof. **I undertake to abide by the said settlement.** I understand that in case of any breach/default. **I shall be liable to be proceeded with further under Section 431 r/w Section 421 Cr.P.C.** in terms of Judgment of Hon'ble Delhi High Court titled as Dayawati Vs. Yogesh Kumar Gosain, Crl Reference No. 1/2016. I am making this statement voluntarily."*

6. Since the respondent failed to make the payment, the petitioner moved an application on 20.08.2020 under Section 431/421 Cr.P.C. which was allowed *per* order dated 20.08.2020 and warrants of attachment were issued under Section 431 and 421 Cr.P.C. against



accused nos.1, 6 and 7, including respondent no.1 herein for an amount of Rs.5,51,96,366/-. However, the order dated 20.08.2020 was challenged before the Hon'ble Supreme Court in *SLP* by respondent no.1 and on 27.11.2020 stay was granted in favour of respondent no.1. In the meanwhile Shri A.A. Murugaiah expired on 16.11.2020. On 01.03.2021 the stay was vacated and the matter was remitted for disposal as per law to the learned MM.

7. On 23.03.2021 a fresh application was filed on behalf of the complainant for vacation of the stay and for issuance of warrants under Section 431/421 Cr.P.C. However, the application was dismissed vide impugned order, primarily, on the reasoning the learned Trial Court has no jurisdiction to execute settlement qua the cases pending before other Courts and secondly the application was premature as deadline for payment was 28.02.2022 and till then the payments could have been made by paying 14% interest.

8. The learned counsel for the respondent agitates the same issues before this Court. Further it was argued only Shri A.A. Murugaiah took personal responsibility to settle and to make payments and hence, the respondent no.1 could not be made liable in these circumstances.

9. Qua the reasoning the learned MM had no power of attachment in respect of amounts due against cases pending with other Courts, I may to refer to *Dayawati* (supra), wherein it is held :

“104. Binding the parties to a settlement agreement entered into through a formal mediation process and being held accountable for honouring the same is really enforcing the legislative mandate in enacting Sections 138 and 147 of the NI Act i.e. to ensure an expeditious time bound remedy for recovery of the cheque amounts. Breach of a lawful entered agreement would not only frustrate the parties to the mediation, but would be opposed to the



spirit, intendment and purpose of Section 138 of the NI Act and would defeat the ends of justice. The courts cannot permit use of mediation as a tool to abuse judicial process.

105. There is no legal prohibition upon a criminal court seized of such complaint, to whom a mediated settlement is reported, from adopting the above procedure. Application of the above enunciation of law to a mediation arising out of a criminal case manifests that a settlement agreement would require to be in writing and signed by the parties or their counsels. The same has to be placed before the court which has to be satisfied that the agreement was lawful and consent of the parties was voluntary and not obtained because of any force, pressure or undue influence. Therefore, the court would record the statement of the parties or their authorized agents on oath affirming the settlement, its voluntariness and their undertaking to abide by it in the manner followed by the civil court when considering a settlement placed before it under Order XXIII Rule 3 of the CPC. The court would thereafter pass an appropriate order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the NI Act and the undertakings of the parties. **The court taking on record the settlement stands empowered to make the consequential and further direction to the respondent to pay the money in terms of the mediated settlement and also direct that the parties would remain bound by the terms thereof.**

106. In having so proceeded, there is a satisfaction of the voluntariness and legality of the terms of the settlement of the court and acceptance of the terms thereof as well as a specific order in terms thereof. **Consequently, the amount payable under the settlement, would become an amount payable under an order of the criminal court.**

107. **So far as the disputes beyond the subject matter of the litigation is concerned, upon the settlement receiving imprimatur of the court, such settlement would remain binding upon the parties and if so ordered, would be subject to the orders of the court.**

Question IV : If the settlement in Mediation is not complied with – is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree?

In case the mediation settlement accepted by the court as above is not complied with, the following procedure is required to be followed :

IV (i) In the event of default or non-compliance or breach of the settlement agreement by the accused person, the magistrate would pass an order under **Section 431 read with Section 421 of the**



Cr.P.C. to recover the amount agreed to be paid by the accused in the same manner as a fine would be recovered.

IV (ii) Additionally, for breach of the undertaking given to the magistrate/court, the court would take appropriate action permissible in law to enforce compliance with the undertaking as well as the orders of the court based thereon, including proceeding under Section 2(b) of the Contempt of Courts Act, 1971 for violation thereof.

Question V : If the Mediated Settlement Agreement, by itself, is taken to be tantamount to a decree, then, how the same is to be executed? Is the complainant to be relegated to file an application for execution in a civil court? And if yes, what should be the appropriate orders with respect to the criminal complaint case at hand. What would be the effect of such a mediated settlement vis-à-vis the complaint case?

V (i) The settlement reached in mediation arising out of a criminal case does not tantamount to a decree by a civil court and cannot be executed in a civil court.

However, a settlement in mediation arising out of referral in a civil case by a civil court, can result in a decree upon compliance with the procedure under Order XXIII of the C.P.C. This can never be so in a mediation settlement arising out of a criminal case.”

10. Thus the apprehension of the learned MM has been duly answered in the judgment of *Dayawati* (supra) wherein it says after the mediation settlement the entire amount, be it outstanding in some other Court can be realised by the Court which has accepted the settlement and it may proceed for recovery under Section 431/421 Cr.P.C.

11. Qua the contention the debt was premature viz. the last date of payment was fixed for 28.02.2022 has also passed since long and admittedly only Rs.94.00 lacs approx. has since been paid, hence there is no doubt the respondents are in default.

12. The contention only Late Shri A.A. Murugaiah was liable as all the cheques were signed by him and the complaints were filed primarily, on the cheques signed by him only, I disagree, to this contention since respondent no.1 was also a party to the mediation proceedings; signed the

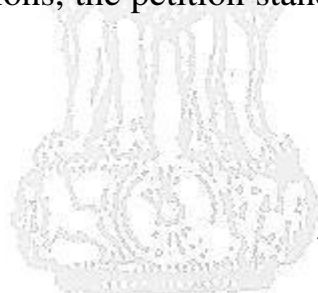


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mediation settlement and she gave a specific undertaking to abide by the settlement that in case of default she may be too be proceeded with under Sections 421/431 Cr.P.C. The impugned order, thus, suffers from infirmity and needs to be set aside.

13. In the circumstances, the petition is allowed. The learned MM is directed to enforce the terms of the settlement agreement dated 19.02.2019 against the respondents by way of attachment of the property belonging to respondent no.6, late Shri A.A. Murugaiah to the extent of shares inherited by the respondents herein as also to the property of respondent no.1. An affidavit qua the properties belonging to late Shri.A.A.Murugaiah and to the extent inherited by respondents and of respondent No.1 be submitted before the learned MM within a week.

14. With these observations, the petition stands disposed of along with pending application(s).



YOGESH KHANNA, J.

SEPTEMBER 03, 2022

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