



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11479 OF 2023

Pandurang Namdevrao Rankhamb
Age- 54 years, Occ- Service,
R/o: Office of the Superintendent of
Police, Near Shivaji Maharaj Statue,
Parbhani, Tq. & Dist. Parbhani.

...Petitioner
[Ori. Accused/Respondent]

VERSUS

Sardar Charansingh s/o Sardar
Ishwarsingh Bawari
Age- 60 years, Occ- Service,
R/o. Parbhani, Tq. & Dist. Parbhani.

...Respondent
[Ori. Complainant/Applicant]

.....
Mr. N.K. Tungar, Advocate for petitioner.
Mr. M.B. Sadanshiv, Advocate for respondent.
.....

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 13th SEPTEMBER, 2023
PRONOUNCED ON: 19th DECEMBER, 2023

ORDER:

1. Question that falls for consideration in the present matter is "Whether a compromise arrived at, in a proceeding filed under Section 138 of Negotiable Instruments Act, before the Mediator amounts to a decree, capable of execution before the Civil Court?"

2. Facts in nutshell leading to the present petition can

be stated thus;

Respondent initiated Summary Criminal Case No. 1393 of 2014, under section 138 of Negotiable Instruments Act, claiming that he had given Rs. 3 lacs, 3 lacs and 1 lac by way of hand loan to petitioner. In lieu of repayment of said amount, three post dated cheques were issued by petitioner which were bounced.

Parties settled this matter before Mediator by entering into compromise (Exhibit-24). However, no order on the said compromise was passed. Thereafter, Purshis (Exhibit-28) was filed by respondent contending that petitioner has failed to honor the compromise. Thereafter, trial was conducted and trial Court by judgment and order dated 16.06.2022, acquitted petitioner.

3. Respondent thereafter filed Special Darkhast No. 18/2022, seeking execution of compromise (Exhibit-24).

4. Petitioner filed application Exhibit-14 challenging the maintainability of execution petition on various grounds including that there is no executable decree passed by Civil Court in favour of respondent, and, therefore execution petition is not maintainable.

5. Respondent opposed the application by filing say stating that compromise in mediation is a deemed decree and hence it is executable. Executing Court after hearing the parties rejected the application filed by petitioner holding that the compromise is a deemed decree and therefore, it can be executed as a decree, in view of Section 21 of Legal Services Authority Act. This order is impugned in the present petition.

6. Heard learned advocate for petitioner and learned advocate for respondent. Perused the memo of writ petition, annexures thereto, impugned order and the citations relied upon by the parties.

7. Indisputably, S.C.C. No. 1393/2014 was sent for mediation and compromise was arrived at in the mediation process. The compromise terms (Exhibit-24) are placed on record and mediation report (Exhibit-26) to that effect was filed in the matter. Both the parties have admitted terms of compromise before the learned Judicial Magistrate First Class.

8. As petitioner defaulted to pay amount agreed in the settlement/compromise, trial was conducted and same has resulted into the acquittal of petitioner. Trial Court in clause (3)

of the operative order observed thus;

"03. The complainant shall be at liberty to avail the appropriate civil/criminal remedy as to the execution/recovery for the non compliance, if any, of the settlement terms which are part of compromise at Exh.24."

Pursuant to these observations, respondent filed execution petition.

9. The Executing Court while holding that it can consider the compromise in mediation as a executable decree has relied on M/s. Afcons Infra. Ltd. Vs. M/s. Cherian Varkey Const., (2010) 8 SCC 24 and on Section 89 of CPC, which recognizes mediation as one of the modes of the Alternative Dispute Resolution. Executing Court has observed that since there was mediation and terms of compromise were recorded at Exhibit-24, the compromise is a deemed decree and it can be executed in terms of section 21 of Legal Services Authority Act.

10. In a reference made to it, Division Bench of Delhi High Court in Dayawati vs. Yogesh Kumar Gosain, CRL.REF.No. 1/2016, was considering "legal permissibility of referring a complaint cases under Section 138 of the NI Act for amicable settlement through mediation; procedure to be followed upon

settlement and the legal implications of breach of the mediation settlement.” Relevant observations of Delhi High Court which cover the issue raised in this petition are as follows:

“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-a-vis the complaint case?

V (i) The settlement reached in mediation 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."

Above answers given by the learned Division Bench of Delhi High Court are squarely applicable to the facts of the present case and answer the issue raised in this petition. I am in respectful agreement with the aforesaid ratio of Delhi High Court. Though, the above ruling was cited before Executing Court, without assigning justifiable reasons, the Executing Court has failed to follow it.

11. The Executing Court has further erred in relying on M/s. Afcons Infra. Ltd. (supra) while coming to a conclusion that compromise arrived in mediation in a matter under section 138 of Negotiable Instruments Act, is a deemed decree and it can be executed in view of Section 21 of Legal Services Authority Act.

12. Decision in M/s. Afcons Infra. Ltd. (supra) was rendered in different facts wherein the Apex Court was considering the general scope of Section 89 of Code of Civil Procedure, 1908 and whether the said section empowers the Court to refer the parties to a suit to arbitration without the consent of both parties.

13. In the present case compromise (Exhibit-24) was arrived at between the parties before the mediator, but same was not honored by petitioner. In *Ratansingh vs. Vijaysingh and others*, (200) 1SCC 469, while explaining the meaning of decree it is held; '*decision of a Court would become final only if there has been an adjudication in a suit, conclusively determining the rights of the parties in respect of all or any of the disputed matters in the suit.*'

14. Since, compromise in the present case is arrived at in mediation process, it cannot be termed as decree and hence it cannot be executed by filing execution petition. For enforcement of compromise, respondent is at liberty to adopt appropriate legal remedy. But compromise arrived at in mediation in a criminal case filed under section 138 of Negotiable Instruments Act, in my view does not tantamount to decree of Civil Court and

therefore its execution cannot be sought.

15. For the aforestated reasons, the impugned order is unsustainable in law and facts of the present case and is liable to be quashed and set aside. In the result, following order:

ORDER

- (I) Writ Petition is allowed.
- (II) Impugned order dated 13.07.2023, passed by learned Civil Judge, Senior Division, Parbhani, below Exhibit-14, in Special Darkhast No. 18/2022, is hereby quashed and set aside.
- (III) Application Exhibit-14 is allowed.
- (IV) Respondent is at liberty to seek enforcement of compromise (Exhibit-24) by adopting appropriate legal remedy.

[NITIN B. SURYAWANSHI, J.]