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

% Judgment delivered on: 25.05.2023

+ CM(M) 1159/2018 & CM APPL. 39101/2018

RAJENDER KUMAR

..... Petitioner

versus

DEVENDER

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. C.M. Grover and Ms. Payal Budhiraja, Advocates alongwith petitioner

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Despite number of efforts, the respondent has not appeared.
2. Learned counsel for the petitioner submits that despite the fact that a Whatsapp message was sent to the learned counsel for respondent and also personal information given to the respondent too, there is no appearance either of the counsel or of the respondent.
3. In such peculiar circumstances, this Court is constrained to proceed with the disposal of the petition. The same was also directed



vide para no.5 (wrongly entered as para no.4) in the order dated 30.01.2023.

4. The case of the petitioner is that after having filed the suit, by virtue of the order dated 25.10.2017, the parties were referred to the Mediation for the purposes of settlement, if any, of the dispute between the parties.

5. It appears that with efforts of the Mediation Centre at Karkardooma Court, a settlement agreement was reached between the parties on 25.11.2017 which was reduced into writing. The said settlement agreement appears at page no. 36 of the present petition. For the purpose of convenience, the settlement agreement duly signed and executed by the parties is extracted hereunder:-

25.11.2017

*Present: Plaintiff Sh. Rajender Kumar in person
with his friend Sh. Sikandar & counsel-
Sh. Satish Verma.
Defendant Sh. Devender in person with
his son Sh. Gaurav.*

The present suit has been filed by the plaintiff for recovery of an amount of Rs. 10,00,000/- from the defendant and same has been received for mediation from the court of Sh. A.S. Jayanchandra, Ld. District & Sessions Judge (Shahdara), Karkardooma Courts, Delhi.

Mediation process explained to the parties. Single & joint session held with the parties. Now, the parties have amicably and voluntarily settled all their disputes on the following terms and conditions:-

1. It is agreed between the parties that defendant Sh. Devender shall pay Rs. 10,00,000/- (Rs. Ten Lakh only) to plaintiff Sh. Rajender Kumar towards full and final



settlement of all claims of the plaintiff arising out of the present suit.

2. *It is agreed between the parties that the payment of the settled amount shall be made by the defendant to the plaintiff by way of cash/DD/cheque in the court concerned by 30.3.2018.*

3. *It is agreed between the parties that on receipt of the settled amount, as agreed herein above, the plaintiff shall withdraw the present suit from the court concerned.*

4. *It is agreed between the parties that thereafter plaintiff shall not be left with any claim whatsoever against the defendant qua the present subject matter & shall not raise any such in future.*

5. *It is agreed between the parties that the settlement has been arrived at between the parties out of their own freewill, without any pressure or coercion, without any threat from any comer & on taking legal advice.*

6. *It is agreed between the parties that the contents of the settlement have been read over to the parties in vernacular & they are signing the same after fully understanding the same.*

7. *It is agreed between the parties that they shall be bound by the settlement.*

RO&AC

*-sd/-
(Rajender Kumar)
Plaintiff*

*-sd/-
(Devender)
Defendant*

*-sd/-
(Sikandar)
Friend*

*-sd/-
(Gaurav)
Son*



-sd/-
(Satish Verma)
Counsel

-sd/-
(Kiran Bhardwaj)
Mediator/25.11.2017

The said agreement has been arrived between the parties voluntarily in the mediation.

The plaintiff shall be entitled to refund of court fees as per section 16 of Court Fees Act.

Copy of the settlement be handed over to the parties free of cost. The settlement be sent to the court concerned. Parties to appear before the court concerned on 15.12.2017, the date already fixed.

-sd/-
(Kiran Bhardwaj)
Mediator/25.11.2017

6. From a perusal of the agreement, it is clear that the parties have arrived at a settlement which was recorded in writing and the parties, in acknowledgment thereto, have appended their signatures. The said signatures have been countersigned by the Mediator.
7. By the order dated 02.05.2018, the learned Trial Court had recorded that statement of both the parties who had also signed the said ordersheet containing their solemn statements.
8. On 17.04.2018, for some unknown reason, the respondent/defendant had resiled/retracted from the terms of the settlement which was recorded in the order dated 17.04.20218 of the learned Trial Court.
9. Subsequently, vide order dated 04.05.2018, the learned Trial Court, on further deliberation, deemed fit to direct the parties to appear



before the Mediation Centre for further deliberations.

10. Mr. C.M. Grover, learned counsel appearing for the petitioner submits that once the parties have entered into a voluntary agreement before the Mediation Centre and which has been reduced into writing and the statements whereto have also been recorded by the learned Trial Court affirming the settlement agreement, none of the parties could have neither resiled or retracted from their solemn affirmation made before the Court nor the terms of the settlement agreement.

11. Learned counsel for the petitioner, brings to the attention of this Court, the provisions of Section 89 of CPC, 1908 as also relies upon the judgment of the Coordinate Bench of this Court in *Khalik Ahmed vs. Mohd. Naved Ansari*, CM(M) No. 291/2011 delivered on 30.07.2012 and *Naresh Chand Jain & Anr. vs. K.M. Tayal*, rendered on 23.12.2012 reported in **ILR 2012 (III) Del 133** to submit that this Court, on the basis of the provisions of Section 89 of CPC, 1908 have declared that no party to the settlement agreement can be permitted to frustrate the terms of the agreement, specifically, once having signed them voluntarily and also supported by the statement made before the Court.

12. The sound and cogent reasons as to why a party has resiled from his/her own statement, is a *sine qua non* for any such retraction to stand the scrutiny of law.

13. Since the judgment of the learned Coordinate Bench of this Court was not before the learned Trial Court, this Court deems it fit to direct the learned Trial Court to take up the said issue raised in the present petition with all earnest and decide the same, keeping in view the aforesaid observations and including the judgments passed by the



Coordinate Bench of this Court.

14. It has been informed that the suit is now pending disposal before the learned Trial Court on 17.07.2023.

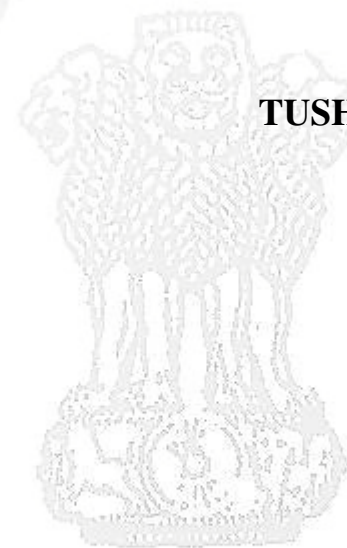
15. The learned Trial Court is directed to take up the aforesaid issue on 17.07.2023 or soon thereafter and dispose of the same in accordance with law keeping in view the aforesaid judgments.

16. The petition is disposed of with no order as to costs. Pending application also stands disposed of.

TUSHAR RAO GEDELA, J.

MAY 25, 2023

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