



2024:DHC:7638



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

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Date of decision: 18th September, 2024

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CRL.M.C. 4974/2024

M/S GOLDEN M P CHIT FUND PVT. LTD.Petitioner

Through: Mr. Vijay Nair, Mr. Girik Tolani, Mr.
Yash Varma and Ms. Sakshi
Kharbanda, Advocates.

versus

THE STATE (GOVT OF NCT DELHI) & ANR.Respondents

Through: Mr. Satinder Singh Bawa, APP for
the State.
Mr. Ramesh Gupta, Senior Advocate
with Mr. Piyush Gupta and Mr.
Rohan Bhatia, Advocates for R2.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC 1973') has been filed on behalf of the petitioner seeking permission to reopen Complaint No. 469088/2016, titled '*M/s Golden M P Chit Fund Pvt. Ltd. vs. Neelam Bhalla*', which was inadvertently withdrawn from the Court of learned Metropolitan Magistrate-02 (South), Saket Court, New Delhi *vide* the statement made by the

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01:41:20**CRL.M.C. 4974/2024****Page 1 of 7**



2024:DHC:7638



complainant on 20.05.2022.

2. Briefly stated, the petitioner is a Chit Fund Company incorporated under the Companies Act, which had filed two Complaint Cases under Section 138 of the N.I. Act against the respondent, Ms. Neelam Bhalla. The *first Complaint Case No. 469088/2016* was in regard to the dishonour of cheque in the sum of Rs.51,13,692/-. The *second Complaint Case No. 469085/2016* was in regard to the dishonour of cheque in the sum of Rs.74,000/-.

3. The petitioner had initiated separate arbitration proceedings in regard to the same transaction and an Arbitration Award dated 14.01.2013, for a amount of Rs.51,64,240/- was given in favour of the petitioner. They had filed an Execution of the Award but the same was kept in abeyance on account of oral settlement with the respondent, who had started making payments in instalments. The Execution Proceedings, however, have been re-opened as the respondent No. 2 has failed to honour her part of the settlement and is now taking advantage of the inadvertent withdrawal of the Complaint Case, by the petitioner.

4. It is submitted that while the two Complaint Cases under Section 138 N.I. Act were pending, the parties arrived at an oral settlement and the respondent No. 2 had started making part payments in instalments against the total liabilities, which is also reflected from the Order Sheet of the learned trial court. Both these Complaints were being taken up together as is also reflected from the Order Sheet dated 26.06.2019 wherein it was observed that “*still an amount of around Rs.30-32 Lakhs is due against the accused.*” The petitioner was directed to place the ‘Statement of Account’ on record. In compliance thereto, the petitioner placed his Statement of



2024:DHC:7638



Account dated 28.08.2019, which clearly shows that there was a balance amount of Rs.67,60,656/- due from the respondent. This amount included the interest @12% p.a. on the principal amount. Thereafter, the matter was adjourned on one pretext or the other including due the Covid-Lockdown restrictions.

5. As the payments were being regularly made by the respondent No. 2 and also as the petitioner had received substantial amount against the total liabilities, it had closed its Statement of Account in respect of the *second Complaint Case*. On 20.05.2022, the petitioner on the advice of the Court, chose to withdraw this Complaint, and though intending to withdraw this second Complaint Case involving dishonoured cheque of Rs.74,000/-, inadvertently, withdrew the first Complaint No. 469088/2016 pertaining to the dishonour of cheque bearing no. 984816 dated 09.07.2012 of Rs.51,13,692/-. Both the parties remained under the impression that the second Complaint pertaining to cheque of lower denomination has been withdrawn.

6. On 01.12.2022, an objection was taken by the petitioner that this Court at Delhi, had no territorial jurisdiction to try and entertain the Complaint under Section 138 N.I. Act as the jurisdiction was of the Faridabad Courts. Accordingly, the petitioner withdrew the second Complaint bearing No. 469085/2016 on 01.12.2022, pertaining to dishonour of Cheque bearing No. 754006 dated 09.07.2012 of Rs. 74,000/-.

7. On the directions of learned Metropolitan Magistrate, the parties went for Mediation though no consensus was arrived at. Throughout the mediation and the pendency of proceedings; the parties carried the same impression of the first Complaint Case pertaining to the cheque of higher



2024:DHC:7638



denomination, being pending.

8. Realising that the inadvertent mistake in withdrawal of the first Complaint Case pertaining to higher denomination cheque, an Application under Section 362 CrPC, was filed by the petitioner, explaining the error in the Order dated 20.05.2022 but the same was dismissed by the learned Metropolitan Magistrate *vide* Order dated 28.11.2023.

9. In the interim, the petitioner revived its execution proceedings *qua* the Arbitration Award, which had been consigned *sine die* on account of the payments being made regularly. There were also settlement talks between the parties but soon the petitioner realised that it was only a time-buying tactic on behalf of the respondent. As soon as the settlement talks failed, the petitioner preferred the present Petition.

10. *It is submitted* that it is evident from the Statement of Account filed by the petitioner that a huge amount is still due and unless the petitioner is allowed to recall and restore his first Criminal Complaint, he would not be able to pursue his remedy to file the Complaint in the Court of Faridabad. Thus, asserting that it was an inadvertent mistake, the petitioner has sought restoration of the first Complaint Case No. 469088/2016.

11. ***No formal Reply*** has been filed to the present Petition but it has been vehemently argued by the learned Senior Counsel on behalf of the respondent that it was evident from the Order dated 26.06.2019 wherein it was recorded that a sum of money has already been received by the complainant and about Rs.30-32 Lakhs is pending. It is also evident that the respondent had been making payments and eventually the entire amount stood paid, which led to the withdrawal of the Complaint Case No. 469088/2016. There is no error in the withdrawal of the Complaint Case as



2024:DHC:7638



is agitated by the petitioner. This is also evident from the fact that the second Complaint was withdrawn by the petitioner, for want of territorial jurisdiction on 01.12.2022. Had there been any mistake, the petitioner would not have remained silent for this period of six months. Also the petitioner asserts that the parties had approached the Mediation Centre for settlement; if so was the case then the petitioner would have realised the alleged inadvertence in withdrawal of the wrong Complaint. Furthermore, despite having withdrawn the second Complaint on 01.12.2022, the same has not been filed in the competent Court in Faridabad, which again reflects that there is no merit in the contentions raised by the petitioner. In fact, because the payments were made pursuant to the oral settlement between the parties, both the Complaints got withdrawn at a gap of six months. This is only an endeavour to re-open the Complaint and to re-agitate the disputes, which already stands settled. It is, therefore, contended that there is no merit in the present Petition, which is liable to be dismissed.

12. Submissions heard.

13. The petitioner, for the recovery of the amounts due (to which the two cheques) in question pertain, initiated an arbitration proceeding which resulted in an Arbitration Award in the sum of Rs.51,64,240/- in favour of the petitioner. The Execution Petition had also been filed for recovery of the Award amount.

14. Thereafter, the two cheques were issued by the petitioner, which got dishonoured on account of insufficiency of funds leading to filing of two Complaint cases, one in respect of the cheque in the sum of Rs. 51,13,692/- and the other in regard to cheque for the sum of Rs. 74,000/-. Even while these two Complaints were pending, there were payments being made on



2024:DHC:7638



behalf of the respondent. That the parties were negotiating for Settlement and the payments were being made from time to time by the respondent, is not only admitted by the petitioner but it is also reflected in the Order dated 26.06.2019 wherein a certain sum of money had already been received by the complainant and about Rs.30-32 Lakhs was pending. Thus, it has been rightly asserted by the learned Senior Counsel on behalf of the respondent that if out of the cheques amount of about Rs. 51,13,692/-, only Rs.30-32 Lakhs was pending, there is no question of an outstanding liability of Rs.67,60,656/- as has been asserted by the petitioner. It is evident from the perusal of the Statement of Account that was furnished by the petitioner that aside from the cheque amount it also included in the interest, which was not the subject matter of the Complaint Case.

15. Though, the petitioner has claimed that it was due to inadvertence that first Complaint Case No. 469088/2016, for cheque amount of Rs.51,13,692/- got withdrawn when the petitioner intended to withdraw the second Complaint Case No. 469085/2016 pertaining to the cheque for lesser denomination in the sum of Rs.74,000/-. Though, the petitioner has tried to justify that this inadvertence happened on account of the two Complaint Cases being taken on the same day but the conduct of the petitioner, does not show that there was any inadvertence. *Firstly*, as observed above, some amounts of money have already been recorded as paid and only about Rs.30-32 Lakhs was recorded to be outstanding. Therefore, the claim that there was an outstanding liability of Rs.67,60,656/- by the petitioner, is not tenable. *Secondly*, the petitioner having withdrawn the first Complaint case, approached the Mediation Centre but surprisingly, still did not come to know about the alleged inadvertence. Learned counsel for the petitioner has



2024:DHC:7638



sought to explain by asserting that though the parties were referred to the Mediation Centre but no consensus of settlement was arrived at the Mediation Centre, consequently, the mediation failed.

16. It is pertinent to observe that even after the second Complaint was withdrawn on the ground of presenting it in the Court of competent jurisdiction as Faridabad; however, the documents in original were not collected till January, 2023 and even thereafter, the Complaint was not filed. The Application under Section 362 Cr.P.C. for recall of the Order dated 20.05.2022 was filed before the learned Metropolitan Magistrate after six months on 05.06.2023 and was dismissed on 28.11.2023. Such conduct of the petitioner again reflects that there was no inadvertence or else it would have acted promptly to rectify the alleged error.

17. In this context, it is also pertinent to observe that having withdrawn the Complaint Case, the petitioner got the Execution Petition for recovery of the said amount revived, in regard to the Arbitration Award. It is quite apparent that the petitioner rather than perusing the remedy under the Complaint Cases for the recovery of the due, amount had chosen to pursue the matter further in the Execution of the Arbitral Award.

18. There is no merit in the present Petition which is hereby dismissed and disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 18, 2024/RS