



2024 : DHC : 982



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.F.A. 19/2021 and CM APP No. 46295/2021, 46297-46298/2021

MOHD AHTESHAM Appellant

Through: Mohd. Furqan, Advocate

versus

SHAKEEL PRACHA Respondent

Through: Mr. S.U. Mirza, Advocate

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

07.02.2024

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1. This case presents an involved, and distinct, factual trajectory.

CC 1658/2014 and CC 10448/2014

2. Two criminal complaints were instituted by the Respondent Shakeel Pracha against the appellant Mohd. Ahtesham. Both the complaints were instituted under Section 138 of the Negotiable Instruments Act, 1881 as cheques issued by the appellant to the respondent had been dishonoured. CC 10448/2014 was for an amount of ₹ 9 Lakhs and CC 1658/2014 was for an amount of ₹ 30.5 lakhs. The total debt in both the complaints was therefore ₹ 39.5 lakhs.

CC 10448/2014 – Proceedings before Lok Adalat and Memorandum

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of Settlement

3. CC 10448/2014 was referred to the Lok Adalat by the learned Metropolitan Magistrate (“the learned MM”) *vide* order dated 24 March 2015.

4. It appears that, on the same day, the parties entered into a Memorandum of Settlement, settling the disputes between themselves not only in respect of the amount of ₹ 9 lakhs forming subject matter of CC 10448/2014, but also in respect of the amount of ₹ 30.5 lakhs, forming subject matter of CC 1658/2014. The terms of the settlement agreement are pivotal to the case at hand and have therefore to be reproduced *in extenso*:

“MEMORANDUM OF SETTLEMENT

This MEMO OF SETTLEMENT is made at Delhi on this 24th day of March 2015, BETWEEN; **SHAKEEL PRACHA** S/O Siraj Pracha R/O F-21, Indraprasth apartment, Patpar Ganj, New Delhi, hereinafter called the “**First Party/Complainant**”

AND

MOHD. AHTESHAM S/O Mohd. Mohtishim Usmani R/O 3544, Jatwara Street, Behind Sablok Clinic, Darya Ganj, New Delhi-2 hereinafter called the “**Second Party/Accuse**”.

The expression First Party and Second Party shall mean and include their legal heirs, successors, executors, legal representatives and assigns of the respective parties.

WHEREAS the second party is liable to pay the legally payable debt amount of Rs. 39,50,000/- (Rs. Thirty nine lac fifty thousand only) towards the first party, hence the second party had issued the 5 following cheques for the aforesaid amount in favour of first party:

Ch. No.	Date	Amount	Drawee Bank
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015753	01.08.14	9,00,000/-	ICICI Bank Br. Darya Ganj, New Delhi 2
015754	03.08.14	9,00,000/-	-DO-
015755	26.08.14	9,00,000/-	-DO-
015756	28.08.14	9,00,000/-	-DO-
015757	30.08.14	3,50,000/-	-DO-

THAT the all aforesaid cheques have been dishonored and the consequences of which the first party has filed the two separate complaint cases u/s 138 of N.I.Act which is pending before the court of Sh. Bharat Chug Id. MM vide CC no. 10448/14 for amount of Rs. 9,00,000/- and before the court of Ms. Riya Guha Id. MM vide CC no. 1658/1/14 for amount of Rs. 30,50,000/-.

THAT in the aforesaid cases, the second party has admitted his liability toward the first party before the Ld. Trial courts upto an amount of Rs. 26,00,000/- (Rs. Twenty six lac only). And the first party is agreed to settle with the second party for entire debt for amount of Rs. 26,00,000/- (Rs. Twenty six lac only). Hence, both the matter have been sent to the LOK ADALAT for final settlement between the parties.

AND WHEREAS the first party and second party, as per the suggestion by the Lok Adalat, are willing to enter into this present memo of settlement to produce the same before the LOK ADALAT for final order/judgment, on the following terms and conditions.

THIS MEMO OF SETTLEMENT WITNESSES AS UNDER:

1. That the second party has admitted his liability of Rs. 26,00,000/- towards the first party and the first party is also agreed to take an amount of Rs. 26,00,000/- for full and final settlement with the second party.
2. That the second party has agreed to pay the aforesaid debt of Rs. 26,00,000/- (Rs. Twenty six lac only) to the first party within one year from the date of execution of this Memo of Settlement / final order, in the following manner/installment:.

Installments	Date	Amount
1.	25.06.2015	Rs. 5,00,000/- (Rs. Five Lac only)
2.	25.09.2015	Rs. 5,00,000/- (Rs. Five Lac only)

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3. 25.12.2015 Rs. 5,00,000/- (Rs. Five Lac only)
4. 25.03.2016 Rs. 11,00,000/- (Rs. Eleven Lac only)

3. That for the purpose to secure the payment of the aforesaid debt amount of Rs. 26,00,000/- (Rs. Twenty six lac only) towards the first party, the second party undertakes the following:

(a) As the second party is engaged in the business of development and construction of properties/plots etc, and he has entered into a **Collaboration Agreement** dated 23.12.2014 vide doc. Certificate no. IN-DL 48567493376681M dt. 23.12.2014 (*copy attached*). With one person namely **Mohd. Moin** s/o Mohd. Mustafa r/o D-72 Dujana House, Matia Mahal, Delhi-6 who is the absolute owner and in possession of the **PROPERTY BEARING NO. 817 TO 819 (AREA MEASURING 74 SQ. YRDS.), SITUATED AT WARD NO. 9, CHATTA SHAIKH MANGLU, JAMA MASJID, DELHI-6** (*herein after referred as said property*).

(b) According to the said Collaboration Agreement, the second party herein shall construct the said property of Mohd. Moin upto five stories *i.e.* Ground, First, Second, Third & Forth Floor, with the own funds of the second party herein, and in return after completion of the said project the second party herein shall take the third floor and forth floor with roof of the said property and the present owner of the property shall registered the sale deed in favour of the second party herein, however the second party herein shall be the legal and absolute owner of the entire third floor and the fourth floor with roof of the said property.

(c) Now the second party, to secure the aforesaid payment of the first party, undertakes to keep reserve his proprietary rights of the fourth floor in the said property upto the value of Rs. 26,00,000/- under the rights of first party until the final payment of the said amount of Rs. 26,00,000/- (Rs. Twenty six lac only) within prescribed time to the first party.

(d) It is clear that the second party shall not dispose of, transfer the physical possession of or even book the fourth floor of the said property to sell out to the third person without the consent of the first party.



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(e) It is very much clear that the present owner of the property Mohd. Moin shall also honor of this Memo of Settlement between the parties, meaning thereby the present owner shall not registered the sale deed or give physical possession of the fourth floor of the property in favour of the second party or any other person without consent of the first party or until the final payment of the first party by the second party as per this MOS.

(f) However, the entire transaction and all decision shall be taken regarding the fourth floor of the said property, with the knowledge and be obtaining consent of the first party strictly.

(g) The reserved right of the first party over the fourth floor of the said property shall be reduced by the proportionate ratio of the amount received by the first party from the second party as per this MOS within prescribed time.

(h) If the second party shall fail to pay the aforesaid debt to the first party, the first party shall have the right to take the fourth floor of the said property and dispose of the same to realize his payment towards the second party, and the present owner of the said property shall help to the first party to dispose the fourth floor of the said property or registered the sale deed in favour of the first party without any hindrance and the second party or his legal heirs shall have no right to object for the same.

4. That if the second party shall violate any conditions of this MOS or shall fail to pay his liable amount of Rs. 26,00,000/- (Rs. Twenty six lac only) to the first party, then the second party shall be tried and punished within the meaning of under section 138 of Negotiable instrument Act.

5. That both the parties are agreed upon this MOS and the present MOS is produced before the LOK ADALAT for its final order.”



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5. In view of the aforesaid settlement agreement, the Lok Adalat passed the following order on 24 March 2015 :

“24.03.2015

Present” Mohd. M.N Bukhari, Advocate, counsel for the complainant along with the complainant,

Accused in person.

Both the parties have amicably settled the matter vide Memorandum of Settlement dated 24.03.2015

Let statement of both the parties be recorded Statements recorded.

Memorandum of Settlement dated 24.03.2015 id Ex.C1.

Both the parties are bound down by terms and conditions recorded in the Memorandum of Settlement dated 24.03.2015. In case of any default, the complainant is at liberty to revive his original complaint to its original position and number.

Both the parties are directed to appear before the concerned court 31.03.2015.

Sh. Narender Kumar Verma
Member, DLSA

(Dr. Vijay Kumar Dahiya)
Lok Adalat Judge
ADJ(Central-07) Delhi
24.03.2015”

6. The appellant did not comply with the terms of the Memorandum of Settlement. As a result, the appellant became liable, as per para 4 of the Memorandum of Settlement, to be tried and punished under Section 138 of the Negotiable Instruments Act.

Conviction in CC 1658/2014

7. The appellant was convicted in CC 1658/2014 (subsequently renumbered as CC 527751/2016) by order dated 22 May 2018. Consequently, *vide* order dated 26 May 2018 passed by the learned MM, the appellant was sentenced to undergo six months' simple



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imprisonment along with compensation of ₹ 36 lakhs, failing which the appellant was to undergo a further period of six months' simple imprisonment. The sentences were directed to run consecutively. It is not in dispute that the appellant has in fact suffered one year's incarceration following the aforesaid order on sentence dated 26 May 2018.

Acquittal in CC 10448/2014

8. The appellant was, however, acquitted in CC 10448/2014 *vide* order dated 31 March 2015 of the learned MM.

Revival Application filed by respondent in CC 10448/2014

9. The respondent, thereupon, moved an application for revival of CC 10448/2014 and also moved Execution Petition 23375/2016 seeking execution of the decision dated 24 March 2015 of the learned Lok Adalat. There is no dispute that the order of Lok Adalat was executable as a decree.

10. The application filed by the respondent for revival of CC 10448/2014 was dismissed by the learned MM *vide* order dated 4 May 2017 on the ground that, as the parties had settled their disputes by way of a settlement agreement, which was independently executable, no occasion arose to revive the criminal complaint.

11. There is no challenge to this order, which has attained finality.

Ex 23375/2016 and the impugned order

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12. In Execution Petition No.23375/2016, instituted by the respondent against the appellant, the appellant filed objections under Order XXI Rule 58 of the CPC, submitting that, as he had undergone incarceration for one year, the respondent was foreclosed from proceeding to execute the debt which was owed by the appellant to the respondent.

13. By the impugned order dated 23 February 2021, the learned ADJ, as the Executing Court, has rejected the objections of the appellant reasoning thus:

“7. Now, let me deal with the order objections of the JD. The argument of JD that since the JD has already undergone one year of imprisonment after the sentence passed by one of the court, therefore, the matter comes to a naught, in my opinion, cannot be accepted. The JD cannot nullify his obligation under MoS merely by submitting that he has already undergone one year imprisonment. The fact that he has undergone one year of imprisonment does not absolve him from his liability, which has been accepted by his in the Lok Adalat Secondly the argument that the property to be constructed by JD has already been disposed of by its owner, also does not absolve him of his liability under the Award passed by the Lok Adalat. If the arguments of JD can be accepted then every person facing the criminal prosecution under Section 138 NI Act can go for imprisonment and avoid his civil liability which is not permissible under the law.”

14. Aggrieved by the said decision, the appellant is before this Court by way of the present first appeal.

Rival Submissions and Analysis

15. I have heard Mr. Furqan, learned counsel for the appellant and Mr. Mirza, learned counsel for the Respondent at length and perused

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the material on record.

16. Mr. Mirza, learned counsel for the respondent has advanced two contentions. The first is that the incarceration of the respondent under Section 138 of the N.I. Act did not eviscerate the debt owed by the appellant to the respondent and, therefore, the respondent was well within his rights in executing the order dated 24 March 2015 of the Lok Adalat for recovery of the said amount. The second is that, once the application of the respondent for revival of CC 10448/2014 stood dismissed on 4 May 2017 by the learned MM, the respondent could not be foreclosed from proceeding in execution as, otherwise, the respondent would neither be able to recover the debt owed by the appellant nor would have the satisfaction of knowing that the appellant had at least undergone incarceration in that regard.

17. I am not in agreement with Mr. Mirza in his contention that he was entitled to proceed for execution for the entire amount of ₹26 Lakhs, forming subject matter of the memorandum of settlement between the appellant and the respondent.

18. This is not a case in which the respondent had proceeded against the appellant by way of a civil suit for recovery of the aforesaid amount and was in possession of a decree in that regard. The order of which execution is sought is an order passed by the learned Lok Adalat on 24 March 2015. That order settled two complaints between the appellant and the respondent, being CC 10448/2014 and CC 1658/2014. A plain reading of the terms of settlement makes it clear that the entire debt of the appellant to the respondent stood



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settled in accordance with the terms of settlement which followed thereunder. The terms of settlement envisage two alternative scenarios. The first was that the appellant would pay the settled amount of ₹ 26 lakhs to the respondent in instalments as stipulated in the agreement and would also provide security to secure the said payment. The second alternative scenario envisaged in para 4 of the terms of settlement was that, in the event of the appellant failing to pay the said amount of ₹ 26 Lakhs, he would be tried and punished within the meaning of Section 138 of the Negotiable Instruments Act. These, therefore, were two alternative eventualities, the happening of either of which would result in satisfaction of the debt owed by the appellant to the respondent.

19. These are the clear and unmistakable terms of the settlement agreement, voluntarily and consciously executed by the parties with their eyes open. There is no dispute that the appellant defaulted in making payment in accordance with the terms of memorandum of settlement. The alternative scenario envisaged by para 4 of the terms of settlement, therefore, became applicable. As per this clause, the appellant was liable to be tried and punished under Section 138 of the Negotiable Instruments Act.

20. To the extent that the appellant was in fact tried and punished under Section 138 of the Negotiable Instruments Act, therefore, the debt owed by the appellant to the respondent did not survive for execution.

21. However, as things transpired, the appellant was convicted and



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sentenced under Section 138 of the N.I. Act only in CC 1658/2014. He was acquitted in CC 10448/2014. That said, however, in the memorandum of settlement, the appellant admitted his liability towards the respondent only to the extent of ₹ 26 lakhs, and the respondent specifically “agreed to settle with the appellant for entire debt for an amount of ₹ 26 lakhs”.

22. As such, the settlement agreement between the parties reduced the amount payable by the appellant to the respondent from the original figure of ₹ 39.5 lakhs to ₹ 26 lakhs. Of course, in default of paying the amount of ₹ 26 lakhs as envisaged in the memorandum of settlement, the appellant would have to suffer conviction and incarceration under Section 138 of the N.I. Act.

23. The order dated 22 May 2018 admittedly convicted the appellant under Section 138 of the Negotiable Instruments Act in respect of a debt of ₹ 30 lakhs. The appellant has also suffered incarceration of one year in respect of the said amount.

24. In that view of the matter, as the total amount of debt, as per the terms of the memorandum, was settled at ₹ 26 lakhs and, for dishonour of the cheque for ₹ 30 lakhs, the appellant has admittedly been convicted and suffered incarceration for one year by order dated 22 May 2018, the alternate scenario envisaged in para 4 of the memorandum of settlement stands satisfied.

25. In that view of the matter, no debt, owed by the appellant to the respondent, can be said to survive for execution.



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Conclusion

26. The impugned order dated 23 February 2021 passed by the learned Executing Court which dismisses the appellant's objections under Order XXI Rule 58 of the CPC and allows the execution to proceed cannot, therefore, sustain on facts or in law. It is accordingly quashed and set aside.

27. The appeal stands allowed, with no orders as to costs.

C.HARI SHANKAR, J.

FEBRUARY 7, 2024

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