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

\+ CRL.M.C. 5929/2019 & CRL.M.A. 40796/2019

POORNIMA JAIN .....Petitioner

Through: Mr. K.C. Mittal, Mr. Yugansh Mittal, Mr. Keshav, Advocates

versus

KOTAK MAHINDRA BANK LIMITED .....Respondent

Through: Ms. Sanya Lamba, Advocate

\+ CRL.M.C. 5930/2019 & CRL.M.A. 40798/2019

SANJAY JAIN .....Petitioner

Through: Mr. K.C. Mittal, Mr. Yugansh Mittal, Mr. Keshav, Advocates

versus

KOTAK MAHINDRA BANK LIMITED .....Respondent

Through: Ms. Sanya Lamba, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **22.07.2025**

1. The present petitions filed under Section 482 of the Code of Criminal Procedure, 1973[1] (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) assail the orders dated 19th September, 2019,[2] passed in CC No. 5004920/2016 and CC No. 5004922/2016, whereby the Petitioners' prayer for enforcing the Settlement Agreement dated 17th April, 2018, and consequent closure of complaint case, was rejected by the Metropolitan

[1] "Cr.P.C."
[2] "the impugned orders"

Magistrate, N.I. Act-02, South West, Dwarka Courts, Delhi. Since both Complaint Cases arise out of the same underlying transaction and the impugned orders dated 19th September, 2019, are *pari materia,* the present petitions are being heard and disposed of by way of the present common order.

2. To appreciate the context in which the impugned orders came to be passed, it is necessary to briefly set out the relevant facts:

2.1. Kotak Mahindra Bank Limited (hereinafter referred to as 'the Respondent') had extended financial facilities to Panama Poly Products Pvt. Ltd., a borrower company of which the Petitioners are directors. The facilities were secured against collateral assets: (a) factory premises at B-8, Site -1, industrial Area, Bulandshahar Road, Ghaziabad, Uttar Pradesh[3] along with machinery installed, (b) residential property bearing no. 19, (c) Block F-3, Model Town-II, Delhi and (d) book debts, raw material, semi-finished and finished goods.

2.2. Upon default in repayment, the Respondent initiated legal proceedings to recover its dues by enforcing the secured assets. During the pendency of those proceedings, the parties entered into a settlement arrangement recorded in a communication dated 17th April, 2018. Under this arrangement, the Respondent agreed to withdraw the criminal complaints filed against the Petitioners upon receipt of a total sum of INR 19,25,00,000/- towards full and final settlement. The terms of this agreement contemplated the following disbursal structure:

(a) INR 11,25,00,000/- to be realised from the sale or release of the factory premises;

(b) INR 7,50,00,000/- to be paid from the sale or release of the residential property;

(c) INR 50,00,000/- to be adjusted from the fixed deposit lying with the Respondent bank by way of margin/DD; and

(d) 35% of the total settlement amount to be paid, as and when realised, from the insurance claim in *Panama Poly Products Pvt. Ltd. v. Oriental Insurance Co. Ltd.*, CC/2438/2017, pending before the National Consumer Disputes Redressal Commission, New Delhi.

3. Mr. K.C. Mittal, contends that despite the Petitioners having fulfilled their obligations under the Settlement Agreement, the Respondent bank has failed to withdraw the criminal complaints lodged under Section 138 of the Negotiable Instruments Act, 1881[4]. He submits that the continuation of these proceedings, despite settlement and performance, constitutes abuse of process and runs contrary to the express terms of the agreement. In support of this submission, he draws attention to Clause 5(a) of the Settlement Agreement dated 17th April, 2018, which reads:

> *a) KMBL shall release the above-mentioned securities on receipt of the amount specified against each of the property, and the charge on the said property will also be released simultaneously by KMBL. The KMBL will also withdraw the criminal cases and complaint filed with Model Town, Police station, Delhi as stated above on receipt of sales consideration of factory- premises, i.e. property No A.*

4. Relying on this clause, Mr. Mittal submits that the consideration pertaining to the factory premises, described *as Property No. A* in the Settlement Agreement, has already been received by the Respondent. He argues that the obligation to withdraw the pending complaints was triggered

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[3] "factory premises"
[4] "the NI Act"

upon such receipt and that the Respondent's failure to honour this commitment undermines the sanctity of the settlement. The continuation of criminal proceedings, in these circumstances, he submits, is not only untenable, but in breach of express binding terms. Mr. Mittal further contends that the Trial Court failed to consider this aspect in light of the observations made by this Court in its order dated 1st May, 2019, and as such, the impugned orders therefore warrant interference.

5. Counsel for the Respondent, however, opposes the Petitioners' claim and submits that the proceedings under Section 138 of the NI Act, cannot be withdrawn at this stage, as the Petitioners have not fully complied with the terms of the Settlement Agreement. She points out that the total settlement amount of INR 19,25,00,000/- was to be paid within six months of execution of the agreement. Of this, only INR 11,25,00,000/-, representing the proceeds from the sale of the factory premises, has been received. She submits that no payment has been made towards the other components of the settlement, including the amount linked to the sale of the residential property, the fixed deposit adjustment, or the insurance claim. It is further contended that although the Respondent has released its charge over the factory premises in good faith, the performance of the settlement remains incomplete in material respects. In such circumstances, the Respondent cannot be compelled to withdraw the criminal complaints, as doing so would defeat the very object of the compromise, which was predicated on full discharge of liability. Counsel also urges that the dishonoured instruments forming the subject of the complaints were part of the larger financing arrangement, and that partial compliance with the settlement terms does not render the continuation of prosecution an abuse of process.

6. Having considered the rival submissions, this Court turns to examine the reasoning adopted by the Trial Court in the impugned orders. The operative portion of the order dated 19th September, 2019, reads:

> *"The matter is listed for orders on enforceability of the consent agreement. The brief averments raised by the Ld. Counsel for the accused person are that the accused has made the payment to the complainant as per the terms of the consent agreement dated 17.04.2018 and thus the complainant is now bound, to withdraw the present criminal, complaint as per the para no.5 of the abovesaid agreement. Further, the Ld. Counsel for the accused also drew the attention of this court to para no.2 of the said consent agreement to highlight the fact that the present complaint being a criminal case was also intended to be withdrawn as per the terms of para no.5 after due payment by the accused to the complainant. Moreover. if has also, been submitted that in light of the order dated 01.05.2019 of the Hon'ble High Court of Delhi, this Court is duty bound to ensure that the settlement agreement in question is enforced by this Court.*
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> *Per contra, the Ld. Counsel of the* ***complainant has averred that the accused person was obligated, to make the payment as per the consent agreement in a time-bound manner which he has failed to do****. It has further been submitted that the abovesaid agreement was not executed before this court, rather it was entered into between the parties outside the Court. Since the accused person has failed to honor the terms of the consent agreement, the same has been rendered a nullity and consequently, the case now needs to be proceeded on merits.*
>
> *Heard. Perused.*
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> *Before averting to the contents of the settlement agreement in dispute, it is pertinent to observe that the parties to the lis had approached the Hon'ble High Court of Delhi against the order dated 18.04.2017 passed by this Court. During the pendency of the aforesaid proceedings before the Hon'ble High Court of Delhi, the parties had entered into the out of court consent agreement in question, taking note of which the Hon'ble High Court of Delhi had directed this court to ensure that the said agreement is acted upon. However, presently the factum of payment by the accused to the complainant as per the settlement agreement has been disputed by the complainant. Therefore, in such a situation where the parties have not expressed their concurrence towards the honoring of the terms of the settlement agreement, as on date, it can have no binding effect on this court and the same becomes a question of evidence.*

In view of the above the contention of the accused person to the effect that the present base needs to be withdrawn by the complainant pursuant to the settlement agreement is not tenable and consequently, the matter shall now be proceeded on merits as per the law.

Be put up for F.P on 22.11.2019."

7. In the considered view of this Court, the impugned orders do not call for interference. The Magistrate has taken a correct and judicious view of the matter by holding that any enforcement of the Settlement Agreement must be contingent upon strict adherence to its terms. A Settlement Agreement, particularly one sought to be acted upon in the context of criminal proceedings, cannot be given effect to in the abstract, it must be shown to have been fully and unequivocally performed by the parties seeking its benefit. The complainant specifically asserted before the Trial Court that the Petitioners had failed to discharge their obligations under the settlement within the time and manner stipulated therein. This fact alone introduces an element of dispute regarding the performance of the contract. In such a situation, where one party alleges non-performance and contests the triggering of reciprocal obligations, it would not have been permissible for the Magistrate to treat the settlement as conclusive and proceed to dispose of the complaint on that basis. To do so would have amounted to short-circuiting the adjudicatory process and pre-judging questions that lie squarely within the domain of evidence. A criminal court, dealing with a complaint under Section 138 of the NI Act, is not empowered to enforce or adjudicate upon civil claims arising from an out-of-court agreement unless both parties jointly acknowledge compliance and seek termination of proceedings. That consensus being absent, the Trial Court rightly declined to

act upon the disputed settlement.

8. It is also relevant to note that the impugned orders were passed in compliance with directions issued by this Court *vide* order dated 1st May, 2019, in a petition challenging the order of the Trial Court in the aforementioned complaint cases. During the course of those proceedings, the Court was apprised of the settlement entered into between the parties, and the petition was accordingly dismissed as infructuous, with a further direction to the Trial Court to take steps for enforcement of the Settlement Agreement. The scope of that direction did not extend to deciding contested issues regarding breach, default, or contractual liability. The Magistrate was never required to conduct a mini-trial on the enforceability of the agreement but only to assess whether the settlement, were mutually accepted and capable of being implemented without further factual inquiry. Once the complainant denied full performance, the matter necessarily fell outside the scope of summary enforcement.

9. In light of the above, this Court is of the view that any claim concerning breach of the Settlement Agreement or its enforceability in part or in full lies outside the purview of the proceedings under Section 138 of the NI Act. Those are issues that may be agitated, if so advised, in appropriate civil proceedings. The complaints under Section 138 NI Act relating to dishonour of the cheques must proceed on merits unless both parties agree to their termination in unequivocal terms.

10. At this juncture it is noted that the Petitioners have, in the alterative, also sought to challenge the earlier orders dated 18th April, 2017, passed by the Trial Court in Complaint Case Nos. 5004920/2016 and 5004922/2016. However, no submissions were addressed on this aspect. In the absence of

any pleadings or contentions pressed in that regard, this Court does not deem it appropriate to examine that prayer. It is clarified, however, that the Petitioners shall remain at liberty to pursue any other remedy available to them in law, including for enforcement of the Settlement Agreement, if so advised.

11. In view of the above, the present Petitions are dismissed and pending applications disposed of.

SANJEEV NARULA, J

JULY 22, 2025/ab