

Ranbir Bhardwaj & Anr vs Sohan Lal Gupta on 23 October, 2020

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 2071/2020

RANBIR BHARDWAJ & ANR.

Through : Mr.Vishvender Verma,
versus

SOHAN LAL GUPTA

Through : Mr.Parveen Suri, Adv

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 23.10.2020

1. The hearing has been conducted through Video Conferencing. Crl.M.A.No.14791/2020
2. Exemption allowed, subject to all just exceptions.
3. The application stands disposed of.

CRL.M.C. 2071/2020 & Crl.M.A.No.14792/2020

4. Petitioners have filed this petition against the impugned order dated 06.10.2020 passed by the learned Session's Court in Crl.Revision No.411/2019 titled as Ranbir Bhardwaj and Another vs Sohan Lal Gupta.

5. The only argument is a settlement agreement dated 05.12.2018, upon which the learned Courts have relied, was got executed by the petitioners under coercion and they have never agreed to enter into such like agreement.

6. The impugned order notes not only the agreement was entered into between the parties, but the petitioners had appeared in the learned Trial Court and had made their statements on oath and that if there was any coercion, they ought to have disclosed the same to the learned Trial Court, which they, admittedly, have not done.

7. Though the matter was again sent to the mediation for further clarification, as the first agreement dated 05.12.2018 was never adhered to by the petitioners, it is argued by the learned counsel for respondent no.2 it was only with a view to give another chance to petitioners to see if any settlement towards interest etc., probably can be made.

8. I have perused the impugned order dated 06.10.2020 which inter alia notes:-

"(8). The cheque of Rs. 20,00,000 (Rupees Twenty Lacs only) in favour of the respondent/ complainant and signed by both the petitioners is Ex.CW1/1. It is dated 12.04.2015. Other relevant documents are also on record. Complaint case crossed all the relevant stages and ultimately reached to the stage of final arguments. On 05.12.2018, the matter was listed for final arguments when both the parties were present with their counsels. It was submitted by both counsels that parties have settled the matter. They filed Memorandum of Understanding which was taken on record. Joint statements of parties was also recorded on 05.12.2018 on oath according to which the complainant as well as both the accused persons stated on oath that they have settled the present complaint alongwith another complaint vide MOU dated 05.12.2018 Ex. P1 bearing their respective signatures. The parties undertook that they shall abide by the terms and conditions of MOU Ex. P1.

Said Memorandum of Understanding Ex. P1 is duly notarized. Moreover, as per Clause4 of the said MOU it is mentioned that parties to the present settlement have settled their claims and signed the Memorandum of Understanding on their own voluntarily, without any coercion, force from any side. It is also mentioned in Clause5 of the said MOU that parties to the settlement have been explained the contents of the Settlement in vernacular and they have understood its contents and effect. It is relevant to note that on 05.12.2018 the matter was adjourned for 06.03.2019 for verification of payment since in the said MOU it was agreed between the parties that the second party i.e. accused persons shall pay a sum of Rs. 25,92,000/ (Rupees Twenty Five Lacs and Ninety Two Thousand only) alongwith interest @ 20% per annum in full and final settlement to the first party i.e. to the complainant and it was agreed that the principal amount of Rs. 25,92,000/ (Rupees Twenty Five Lacs and Ninety Two Thousand only) shall be paid on or before 25.01.2019 and interest shall be paid on or before 25.02.2019. It is relevant to note that the said Settlement/MOU dated 05.12.2018 was regarding settlement of three different complaint cases out of which two were pending in the court of Ms. Neha Pandey, Ld. M.M., District West, Tis Hazari Courts, Delhi and the third complaint case was pending in the court of Ms. T. Priyadarshni, Ld. M.M., District West, Tis Hazari Courts, Delhi as mentioned in Ex. P1 i.e. MOU.

(9). On 06.03.2019 it was submitted on behalf of complainant that accused has not made any payment to the complainant as per settlement. The counsel for the complainant prayed for the attachment of the property of the accused. The matter was adjourned for 27.04.2019 by Ld. M.M. On 27.04.2019, the complainant filed application u/s 421 r/w Section 431 Cr.P.C. and matter was adjourned for 27.05.2019 for reply and arguments on the said application. On 27.05.2019, reply was not filed and last and final opportunity was granted to the accused for filing reply subject to the cost of Rs. 2,000/ to be paid to the complainant. Matter was adjourned for 20.06.2019 and on 20.06.2019 exemption application from personal appearance was filed on behalf of accused. Said application was dismissed and bailable warrants were issued against the accused persons in the sum of Rs. 20,000/ each with one surety each of the like amount. Moreover, no reply to the said application was filed on behalf of accused and, hence, right of the accused persons to file the reply was closed. Arguments were heard on the said application u/s 421 read with Section 431 Cr.P.C. and

the matter was adjourned for orders for 20.07.2019. On 20.07.2019, vakalatnama was filed on behalf of accused persons and previous cost of Rs. 2,000/- was paid. It was submitted on behalf of accused that accused is ready to make the payment of Rs. Two Lacs in lieu of the settlement on the said date itself to the complainant, however, certain objection was raised on behalf of complainant. On 20.07.2019, both parties submitted that they wish to explore the possibility of settlement through mediation. Matter was referred for mediation to Mediation Centre, Tis Hazari Courts, Delhi for that date itself, however, on 20.07.2019 itself the matter was received back from Mediation Centre as unsettled. On 20.07.2019 itself after hearing and perusing the record, Ld. M.M. issued warrants of attachment of property of accused for recovery of the settled amount in view of Section 421 r/w Section 431 Cr.P.C. and the matter was posted for filing report by the concerned Collector for 17.10.2019. Subsequently, an application for staying the order was filed on behalf of accused which was taken up on 03.10.2019 and notice of the said application was issued to the complainant for 04.10.2019. Said application was for stay of the order dated 20.07.2019 as mentioned in order dated 04.10.2019 of Ld. M.M. On 04.10.2019 arguments were addressed by Ld. Counsels for the parties and the matter was fixed for orders on the date already fixed i.e. 17.10.2019. On 17.10.2019 vide detailed order, the Ld. M.M. dismissed the said application filed on behalf of accused for recalling the alleged Memorandum of Settlement and order dated 20.07.2019. (10). The sole contention of the petitioners is that they did not sign the Agreement without force and coercion. It is not in dispute that the joint statement of the parties was recorded by Ld. M.M. on oath on 05.12.2018 and the said MOU was taken on record and parties undertook to abide by the terms and conditions of the said MOU Ex.P1. Moreover, it is also not in dispute that the accused paid a sum of Rs. 45,000/- (Rupees Forty Five Thousand only) to the complainant in terms of the Memorandum of Settlement on 22.08.2019 in CC No.10372/16 as the said complaint case was pending in the court of Ms. T. Priyadarshini, Ld. M.M., District West, Tis Hazari Courts, Delhi as mentioned in the MOU. Copy of the said order dated 22.08.2019 is on record. Petitioners have not even whispered that they made statement on oath before Ld. M.M. on 05.12.2018 under any force, coercion or undue influence. Their signatures are not disputed on the said statement as well as MOU. Moreover, from the record it is clear that after about seven months from 05.12.2018, the petitioners/ accused persons chose to explore the possibility of settlement through Mediation and the matter was referred for mediation on 20.07.2019. This was only when the accused utterly failed to reply the application u/s 421 r/w Section 431 Cr.P.C. and right of the accused to file the reply was closed and the matter was listed for orders on the said application on 20.07.2019 itself. T.C.R. reflects that dilatory tactics were adopted by the accused persons to escape their liability for making payment as per MOU dated 05.12.2018. The matter was already at the stage of final arguments at the time of said settlement. The payment as per MOU was to be made by 25.01.2019 regarding principal amount, and, interest was to be paid by 25.02.2019. However, it was not paid for quite a long time by the accused to the complainant."

9. The entire facts have been enumerated in the above order by the learned Session's Court and he has examined each and every detail and its effect in entirety. The facts shows the agreement dated 05.12.2018 was entered into by the petitioners voluntarily and the entire goof up is to derail the proceedings. There is no perversity or illegality in the impugned order passed by the learned Session's Court. There is no merit in the petition, which is accordingly dismissed. Pending application, if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

OCTOBER 23, 2020 M