

Ashish Sheoran vs Vivek Sharma & Anr on 18 January, 2022

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CONT.CAS(C) 652/2021
ASHISH SHEORAN

Through: Ms. Smita Bankoti,
versus

VIVEK SHARMA & ANR.

Through: Mr. Vikas Tomar, Ad

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 18.01.2022 The hearing has been conducted through video-conferencing.

1. The petitioner has been paid about Rs.16.14 lacs out of an admitted amount of Rs.33.60 lacs along with interest @15% p.a. The respondents' reply is on record. The learned counsel for the respondents submits that the petition is not maintainable because there was no undertaking before the court to abide by the Settlement Agreement dated 29.05.2017. He further submits that the said Settlement Agreement is not a part of any court order directing the respondent to pay the monies; that no undertaking has been given to the court in terms of the judgment of this court in Dayawati vs. Yogesh Kumar Gosain in CRL. REF. No. 1/2016 decided on 17.10.2017, which directs inter alia as under: -

"...

Proceedings before the court III (x) The magistrate would adopt a procedure akin to that followed by the civil court under Order XXIII of the C.P.C.

III (xi) The magistrate should record a statement on oath of the parties affirming the terms of the settlement; that it was entered into voluntarily, of the free will of the parties, after fully understanding the contents and implications thereof, affirming the contents of the agreement placed before the court; confirming their signatures thereon. A clear undertaking to abide by the terms of the settlement should also be recorded as a matter of abundant caution.

III (xii) A statement to the above effect may be obtained on affidavit. However, the magistrate must record a statement of the parties proving the affidavit and the settlement agreement on court record. III (xiii) The magistrate should independently

apply his judicial mind and satisfy himself that the settlement agreement is genuine, equitable, lawful, not opposed to public policy, voluntary and that there is no legal impediment in accepting the same. III (xiv) Pursuant to recording of the statement of the parties, the magistrate should specifically accept the statement of the parties as well as their undertakings and hold them bound by the terms of the settlement terms entered into by and between them. This order should clearly stipulate that in the event of default by either party, the amount agreed to be paid in the settlement agreement will be recoverable in terms of Section 431 read with Section 421 of the Cr.P.C. ..."

2. The learned counsel for the petitioner submits that the aforesaid judgment was pronounced on 17.10.2017 and the said Settlement Agreement was recorded almost five months earlier. In any case even after the passing of the Dayawati judgment (supra), the respondent had undertaken before the learned Trial Court on 21.12.2017 as under: -

"

Counsel for the accused submits on instructions from the accused that the first installment shall be made within the grace period of one month that in any case on or before 20.01.2018. He further states on instructions that the first installment shall now be paid alongwith interest calculated on the basis of 15% per annum for the delay period.

Complainant is agreeable to this proposition. In this view, put up on 23.01.2018 at 2.30 p.m for apprising this Court about the payment of first installment."

3. On 23.01.2018, the respondents sought further time of 30 days to comply with the Settlement Agreement, which was recorded as under: -

" ...

Accused seeks 30 days time for making this pending payment. He also assures that he will the payment of the interest amount as per the terms and conditions of the mediation within 30 days and thereafter will regularize the payment.

The complainant has no objection but subject to the conditions that the same payment is paid with the interest as per the terms of the settlement.

This proposition is agreeable to both the parties. Now put up on 26.02.2018 at 2.30 PM for making payment of Rs.1,80,000/- towards the first instalment, as agreed between the parties alongwith interest calculated and payable in terms of the mediation settlement."

4. From the aforesaid recording of the court's proceedings, it is evident that the respondents had undertaken to pay the first instalment on or before 20.01.2018 along with interest @15% p.a. for the delay period. There is a voluntary compliance of the Settlement Agreement in terms of the assurance given to the learned Trial Court on 21.12.2017.

5. The respondents were present before the learned Trial Court on 20.07.2018 when the following order was passed: -

"...

Today the case is fixed for making payment of second installment in terms of mediation settlement along with additional interest at the rate of 15%, which approximately comes around Rs.11,34,000/-. Accused submits that despite his best efforts he could not arrange the money due and payable today because he is a farmer and entire crop has suffered huge losses and he is to recover significant money from the market itself. However, to show his bond fide, accused has handed over a cash sum of Rs.1,34,000/- to the complainant towards payment of second installment. Receiving taken in file CC No.40394/16. Accused seeks a month's time to make the remaining payment of Rs.10 Lakhs towards the second installment. The same is opposed by the complainant.

Heard. Perused.

Accused has to make payment of the installment and today also he has made some payment. This court is of the opinion that interest of justice demands that some time may be given to the accused to arrange payment towards second installment, as he has shown his bona fide by making some payment today."

6. On 06.08.2018, the respondents undertook to abide by the said Settlement Agreement and sought some more time to pay monies. It is to be noted that the consequences of non-compliance of the mediation settlement had been explained to the respondents, who had already undertaken to abide by the terms of the said Settlement Agreement. They were also directed to file an affidavit apropos the particulars of their moveable and immovable assets. On the very next date i.e., on 20.08.2018, the learned Trial Court had recorded a further cash payment of Rs.1,62,500/- to the petitioner by the respondent, towards second instalment. Again on 11.09.2018, the respondents, who were present in the court, had sought and were granted more time to comply with the terms of the said Settlement Agreement. Same was the position on 24.11.2018. On 26.11.2018, another Rs.3 lacs were paid to the petitioner by the respondents. On 26.07.2019, the court recorded the submissions of the learned counsel for the respondent nos. 2 and 3 that they were willing to pay the balance amount as per the said Settlement Agreement.

7. The first instalment of Rs.11.80 lacs had been paid by 26.02.2018. Subsequent amounts of Rs.1.34 lacs, Rs.1.62 lacs and Rs.3 lacs, in part compliance of the said Settlement Agreement, were received by the petitioner on 20.07.2018, 20.08.2018 and 26.11.2018, respectively, without prejudice to their

rights and contentions. In effect, the petitioner has been paid an amount of Rs.16.14 lacs.

8. Respondents have filed their affidavits before the High Court of Himachal Pradesh in Civil Suit Nos. 3 of 2017 to the effect that they would abide by the Settlement Agreement dated 29.05.2017. They have also acknowledged the pendency of a case before the learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi, from which these proceedings arise.

9. The court would note that the respondents had represented themselves before the court, both personally and through counsel, and intimated that they would be complying in terms of the said Settlement Agreement. They did comply, to some extent. Indeed, they did file their affidavits to the effect that they would abide by the said Settlement Agreement, albeit, the said affidavits were filed in another proceeding, as noted herein above. Their affidavits are reproduced hereunder: -

10. Now for the respondents to say that they have not filed an affidavit of undertaking to comply with the orders of the learned Trial Court is nothing but an evasive approach to somehow walk away from the said proceedings and to frustrate the said Settlement Agreement. Insofar as the affidavits have been filed, it is sufficient for the purpose of compliance. In the circumstances, the contention of the respondents that the requisite undertakings were not filed, is incorrect. The undertakings and assurances given by the respondents to both the High Court of Himachal Pradesh and the learned Trial Court in Delhi ought to have been complied with. Not having done so, they have breached the same. Prima facie, they have committed contempt of court.

11. Issue notice to the respondents to show cause as to why proceedings be not initiated against them for having committed contempt of the court's directions under section 2(b) read with sections 10 and 12 of the Contempt of Courts Act, 1971.

12. The learned counsel named above accepts notice on behalf of the respondents. Compliance affidavit/reply be filed in three weeks. Rejoinder thereto, if any, be filed before the next date.

13. List on 01.04.2022.

14. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J JANUARY 18, 2022 RW