

# Rakesh Sood vs Roy Brothers, A Partnership Firm & Ors on 10 July, 2024

**Author: Dharmesh Sharma**

**Bench: Dharmesh Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CONT.CAS(C) 996/2023 & CM APPL. 50607/2023  
RAKESH SOOD

Through:

versus

ROY BROTHERS, A PARTNERSHIP FIRM & ORS.

.....Respondent

Through: Mr. Pran Krishna Jana,  
Advocate.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 10.07.2024

1. Having heard the learned counsel for the parties present and upon perusal of the record, it appears that the respondents have executed three Memorandum of Settlements at different times, and each time they undertook to make the payment of the outstanding dues to the petitioner.
2. Evidently, the complaint under Section 138 of the Negotiable Instruments Act, 1881 has been disposed of in terms of the settlement between the parties vide order dated 03.03.2020 by the learned Presiding Officer, Special Courts, South District, New Delhi.
3. During the course of arguments, learned counsel for the petitioner referred to the decision by this Court in Dayawati v. Yogesh Kumar Gosain<sup>2</sup>, whereby this Court laid down the propositions of law in cases where settlement is arrived at between the NI Act 2017 SCC OnLine Del 11032 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 12/07/2024 at 02:33:43 parties in mediation/conciliation, in relation to proceedings pending under Section 138 of the NI Act. Further, it was observed that apart from civil remedies in the nature of execution of arbitral awards, as well as coercive process under Section 431 read with Section 421 of the Code of Criminal Procedure, 1973, before the learned Metropolitan Magistrate, the following was observed: -

"127. In addition, if the party has tendered an undertaking to abide by the terms of the agreement, which stands accepted by the court, in the event of breach of the undertaking, action and consequences under the Contempt of Courts Act could also follow.

XV. Reference answered

128. In view of the above, the reference made by the ld. Metropolitan Magistrate by the order dated 13th January, 2016 (extracted in para 1 above) is answered thus:

Question I : What is the legality of referral of a criminal compoundable case (such as on u/s 138 of the NI Act) to mediation?

129. It is legal to refer a criminal compoundable case as one under Section 138 of the NI Act to mediation.

Question II : Can the Mediation and Conciliation Rules, 2004 formulated in exercise of powers under the CPC, be imported and applied in criminal cases? If not, how to fill the legal vacuum? Is there a need for separate rules framed in this regard (possibly u/s 477 of the CrPC)?

130. The Delhi Mediation and Conciliation Rules, 2004 issued in exercise of the rule making power under Part-10 and Clause (d) of sub-section (ii) of Section 89 as well as all other powers enabling the High Court of Delhi to make such rules, applies to mediation arising out of civil as well as criminal cases.

Question III : In cases where the dispute has already been referred to mediation - What is the procedure to be followed thereafter? Is the matter to be disposed of taking the very mediated settlement agreement to be evidence of compounding of the case and dispose of the case, or the same is to be kept pending, awaiting compliance thereof (for example, when the payments are spread over a long period of time, as is usually the case in such settlement agreements)?

In the context of reference of the parties, in a case arising under Section 138 of the NI Act, to mediation is concerned, the following procedure is required to be followed:

III (i) When the respondent first enters appearance in a complaint under Section 138 of the NI Act, before proceeding further with the case, the Magistrate may proceed to record admission and denial of documents in accordance with Section 294 of the Cr.P.C., and if satisfied, at any stage before the complaint is taken up for hearing, there exist elements of settlement, the magistrate shall inquire from the parties if they are open to This is a digitally signed order.

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the disputes.

III (ii) If the parties are so inclined, they should be informed by the court of the various mechanisms available to them by which they can arrive at such settlement including out of court settlement; referral to Lok Adalat under the Legal Services Authorities Act, 1987; referral to the court annexed mediation centre; as well as conciliation under the Arbitration and Conciliation Act, 1996.

III (iii) Once the parties have chosen the appropriate mechanism which they would be willing to use to resolve their disputes, the court should refer the parties to such forum while stipulating the prescribed time period, within which the matter should be negotiated (ideally a period of six weeks) and the next date of hearing when the case should be again placed before the concerned court to enable it to monitor the progress and outcome of such negotiations.

III (iv) In the event that the parties seek reference to mediation, the court should list the matter before the concerned mediation centre/mediator on a fixed date directing the presence of the parties/authorized representatives before the mediator on the said date.

III (v) If referred to mediation, the courts, as well as the mediators, should encourage parties to resolve their overall disputes, not confined to the case in which the reference is made or the subject matter of the criminal complaint which relates only to dishonouring of a particular cheque.

III (vi) The parties should endeavour to interact/discuss their individual resolutions/proposals with each other as well and facilitate as many interactions necessary for efficient resolution within the period granted by the court. The parties shall be directed to appear before the mediator in a time bound manner keeping in view the time period fixed by the magistrate.

III (vii) In the event that all parties seek extension of time beyond the initial six week period, the magistrate may, after considering the progress of the mediation proceedings, in the interest of justice, grant extension of time to the parties for facilitating the settlement. For the purposes of such extension, the magistrate may call for an interim report from the mediator, however keeping in mind the confidentiality attached to the mediation process. Upon being satisfied that bona fide and sincere efforts for settlement were being made by the parties, the magistrate may fix a reasonable time period for the parties to appear before the mediator appointing a next date of hearing for a report on the progress in the mediation. Such time period would depend on the facts and circumstances and is best left to the discretion of the magistrate who would appoint the same keeping in view the best interest of both parties. Contents of the settlement III (viii) If a settlement is reached during the mediation, the settlement agreement which is drawn-up must incorporate:

(a) a clear stipulation as to the amount which is agreed to be paid by the party;

(b) a clear and simple mechanism/method of payment and the manner and This is a digitally signed order.

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(c) undertakings of all parties to abide and be bound by the terms of the settlement must be contained in the agreement to ensure that the parties comply with the terms agreed upon;

(d) a clear stipulation, if agreed upon, of the penalty which would enure to the party if a default of the agreed terms is committed in addition to the consequences of the breach of the terms of the settlement;

(e) an unequivocal declaration that both parties have executed the agreement after understanding the terms of the settlement agreement as well as of the consequences of its breach;

(f) a stipulation regarding the voluntariness of the settlement and declaration that the executors of the settlement agreement were executing and signing the same without any kind of force, pressure and undue influence.

III (ix) The mediator should forward a carefully executed settlement agreement duly signed by both parties along with his report to the court on the date fixed, when the parties or their authorized representatives would appear before the court.

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.

III (xv) Upon receiving a request from the complainant, that on account of the compromise vide the settlement agreement, it is withdrawing himself from prosecution, the matter has to be compounded. Such prayer of the complainant has to be accepted in keeping with the scheme of Section 147 of the NI Act. (Ref. : (2005) CriLJ 431, Rameshbhai Somabhai Patel v. Dineshbhai Achalanand Rathi) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 12/07/2024 at 02:33:44 At this point, the trial court should discharge/acquit the accused person, depending on the stage of the case. This procedure should be followed even where the settlement terms require implementation of the terms and payment over a period of time.

III (xvi) In the event that after various rounds of mediation, the parties conclude that the matter cannot be amicably resolved or settled, information to this effect should be placed before the magistrate who should proceed in that complaint on merits, as per the procedure prescribed by law.

III (xvii) The magistrate should ensure strict compliance with the guidelines and principles laid down by the Supreme Court in the pronouncement reported at (2010) 5 SCC 663, Damodar S. Prabhu v. Sayed Babalal H and so far as the settlement at the later stage is concerned in (2014) 10 SCC 690 Madhya Pradesh State Legal Services Authority v. Prateek Jain.

III (xvii) We may also refer to a criminal case wherein there is an underlying civil dispute. While the parties may not be either permitted in law to compound the criminal case or may not be willing to compound the criminal case, they may be willing to explore the possibility of a negotiated settlement of their civil disputes. There is no legal prohibition to the parties seeking mediation so far as the underlying civil dispute is concerned. In case a settlement is reached, the principles laid down by us would apply to settlement of such underlying civil disputes as well.

131. In case reference in a criminal case is restricted to only an underlying civil dispute and a settlement is reached in mediation, the referring court could require the mediator to place such settlement in the civil litigation between the parties which would proceed in the matter in accordance with prescribed procedure.

Question IV : If the settlement in Mediation is not complied with - is the court required to proceed with the case for a trial on merits, or hold such a settlement agreement to be executable as a decree?

132. In case the mediation settlement accepted by the court as above is not complied with, the following procedure is required to be followed:

IV(i) In the event of default or non-compliance or breach of the settlement agreement by the accused person, the magistrate would pass an order under Section 431 read with Section 421 of the Cr.P.C. to recover the amount agreed to be paid by the accused in the same manner as a fine would be recovered.

IV(ii) Additionally, for breach of the undertaking given to the magistrate/court, the court would take appropriate action permissible in law to enforce compliance with the undertaking as well as the orders of the court based thereon, including proceeding under Section 2(b) of the Contempt of Courts Act, 1971 for violation thereof. Question V : If the Mediated Settlement Agreement, by itself, is taken to be tantamount to a decree, then, how the same is to be executed? Is the complainant to be relegated to file an application for execution in a civil court? And if yes, what should be the appropriate orders with respect to the criminal complaint case at hand. What would be the effect of such a This is a digitally signed order.

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V(i) The settlement reached in mediation arising out of a criminal case does not tantamount to a decree by a civil court and cannot be executed in a civil court.

133. However, a settlement in mediation arising out of referral in a civil case by a civil court, can result in a decree upon compliance with the procedure under Order XXIII of the C.P.C. This can never be so in a mediation settlement arising out of a criminal case."

4. Evidently, the respondents are in wilful disobedience of the directions of the Courts as well the Memorandum of Settlements arrived between the parties in the present lis. All the respondents are directed to appear in person on the next date of hearing, failing which this Court shall be constrained to issue coercive orders against them.

5. Renotify on 29.08.2024.

DHARMESH SHARMA, J.

JULY 10, 2024 VLD This is a digitally signed order.

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