

16 EXECUTION (COMM.) 18/25
GAURAV CHADDA VS. RANJEET CHAUDHARY AND ORS

16.05.2025

Present : Sh.Deepak Singh Thakur, Advocate, for the DH,
through video-conferencing.
JD no.3 in person.
None for the remaining JDs.

It is stated by the Ld. Counsel for the DH that the proposal given by JD No.3, on 22.04.2025, vide application u/s 151 CPC, (IA/2/2025), was considered by the DH. But, the same was not acceptable to the DH.

Case file is perused.

Objections under Order XXI Rule 23(2) & 58 CPC, have been filed on behalf of JD No.3 on 20.03.2025, and the JDs no.1 & 2, on 09.04.2025.

2. In both the objections, it is stated that this court has not passed any decree, till date, and therefore, in terms of Order XXI CPC, the present execution proceedings cannot proceed. It is further stated that the settlement order, recorded in mediation, on 24.08.2023, was treated as a decree, without deciding the issues raised by the parties, and therefore, the settlement dated 24.08.2023, cannot be treated as a decree, unless it is not decided on merits.

3. It is further stated in the objections that the entire settlement was based upon the mutual understandings of the parties that the JD no.1 shall sell the disputed property. But, the property has not been sold till date and none of the parties has

received any amount, in pursuance to the settlement, and therefore, the present execution petition is pre-mature.

4. It is further stated in the objections that the mediation order is not binding upon the JDs, unless the property is sold out by the JD. It has been prayed that the execution petition may be dismissed with exemplary costs.

5. In joint reply to the objections of the JDs, it is stated on behalf of the DH, that the objections are filed by the JDs with the intention to mislead this court by incorporating incorrect and baseless averments and are an abuse of the process of law. It is further stated that the present execution petition was filed by the DH, only after passing of a compromise decree, which was passed on voluntary mutual settlement between the parties, and therefore, the objections are not maintainable and deserve to be dismissed.

6. It is further stated in the reply that the objectors/JDs are deliberately misleading this court to wriggle out of their obligations under the compromise decree. It is further stated that vide order dated 24.08.2023, this court had disposed off the suit of the DH, as compromised, as per the settlement recorded between the parties, before the Delhi Mediation Centre, on 24.08.2023. It has been prayed that the objections filed by the JDs, be therefore, dismissed with exemplary costs.

7. Arguments on the objections were addressed by Sh. Deepak Singh Thakur, Advocate, for the DH; Sh. R.S. Sharma, Advocate, for the JDs no.1 & 2 and Sh. Sumit Kumar Khatri, Advocate, for JD no.3, on 17.04.2025. During the course of arguments, the Ld. Counsels for the parties have reiterated the

contents of their pleadings. It was argued by the Ld. Counsels for the objectors/JDs that the mediation settlement, dated 24.08.2023, was not confirmed by the court, and is therefore, not valid, and there is no default clause in the mediation settlement, dated 24.08.2023. It was further argued that the DH has not withdrawn his petition, and therefore, the JDs are not bound to comply with the terms and conditions of the settlement dated 24.08.2023. The Ld. Counsels for the JDs have relied upon the following judgments, in support of their contentions, as under:

- (i) *'K.K. Modi vs. K.N. Modi & Ors', reported as, '(1998) 3 SCC 573'*;
- (ii) *'Nazeer Ahmed vs. State Bank of Mysore and Ors.', passed in 'Appeal (Civil) No. 175 of 2007, dated 12.01.2007;*
- (iii) *'Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd.', reported as, '(2011) 5 SCC 532'.*
- (iv) *'Topanmal Chhotamal vs. Kundomal Gangaram And Ors.', reported as, 'AIR 1960 SC 388';*

8. On the other hand, the Ld. Counsel for the DH has argued that no legally sustainable ground has been disclosed by the objectors/JDs in their objections. It was further argued that the settlement recorded before the Delhi Mediation Centre, on 24.08.2023, is a valid and legally sustainable settlement, on the basis of which a compromise decree was also passed by the court on 24.08.2023. He has further argued that the settlement, dated 24.08.2023, has not been challenged before any Appellate Court or Forum, by the JDs, till date, and therefore, the present objections are devoid of any merits and be dismissed with exemplary costs.

9. I have carefully perused the case file and I have also given my considered thoughts to the arguments addressed by the Ld. Counsels for the parties. I have also perused the judgments cited by the Ld. Counsels for the JDs.

10. Perusal of the record shows that the present execution petition has been filed by the DH, for execution of the compromise decree, dated 24.08.2023. It is further observed that an amicable settlement was effected between the parties on 24.08.2023, before the Delhi Mediation Centre, Karkardooma Courts, and on the basis of the said mediation settlement, a compromise decree was passed by the court on 24.08.2023. On 24.08.2023, the statements of the DH as well as the JDs were also recorded by the court. The settlement recorded before the Delhi Mediation Centre, dated 24.08.2023, Ex.P1, and the statements of the parties were made the part and parcel of the compromise decree.

11. Sub-Section 1 of Section 27 of The Mediation Act, 2023, makes the mediation settlement final and binding on the parties. The provisions of Section 27 & 28 of The Mediation Act, 2023, are reproduced below for ready reference, as under:

“CHAPTER VI

ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENT

27. Enforcement of mediated settlement agreement.—(1) A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2).

(2) Subject to the provisions of section 28, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a judgment or decree passed by a

court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

28. Challenge to mediated settlement agreement.—(1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:—

(i) fraud;

(ii) corruption;

(iii) impersonation;

(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 6.

(3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 19:

Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.”

12. It is an admitted fact that the mediation settlement was executed between the parties, voluntarily and the same has not been challenged by the JDs, before any Appellate Court or Authority, on any ground, including fraud or coercion or misrepresentation etc., as per Section 28(2).

13. It was held by the Hon’ble Supreme Court of India, in case titled as, ‘**Vikram Bakshi & Ors. vs. Ms.Sonia Khosla (Dead) By Lrs.**’, passed in, ‘**SLP (Crl.) No.6873/2010**’, dated 08.05.2014, as under :

“18. This Bench is of firm opinion that mediation is new dimension of access to justice. As it is one of the best forms, if

not the best, of conflict resolution. The concept of Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self-Determination Theorists). Their definition of justice is drawn primarily from the exercise of party self-determination. They are hopeful about the magic that can occur when people open up honestly and empathetically about their needs and fears in uninhibited private discussion. And, as thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints.

Professor Stulberg, in his masterful comment on the drafting of the Uniform Model Mediation Act, Fairness and Mediation, begins with the understated predicate that “the meaning of fairness is not exhausted by the concept of legal justice.” In truth, the more pointed argument advanced in the article is that legal norms often diverge quite dramatically from our notion of fairness and the notion of fairness of many disputants. Legal rules, in Stulberg’s vision, are ill-equipped to do justice because of their rigidity and inflexibility. Professors Lela Love and Jonathan M. Hyman argue that mediation is successful because it provides a model for future collaboration. The authors state that the process of mediation entails the lesson that when people are put together in the same room and made to understand each other’s goals, they will together reach a fair resolution. They cite Abraham Lincoln’s inaugural address which proposed that in a democracy, ““a patient confidence in the ultimate justice of the people’ to do justice among themselves . . . is a pillar of our social order.” Professor Carrie Menkel-Meadow presents a related point of view in making the case that settlement has a political and ethical economy of its own and writes:

“Justice, it is often claimed, emerges only when lawyers and their clients argue over its meaning, and, in turn, some authoritative figure or body pronounces on its meaning, such as in the canonical cases of the late-twentieth century... For many years now, I have suggested that there are other components to the achievement of justice. Most notably, I refer to the process by which we seek justice (party participation and empowerment, consensus rather than compromise or command) and the particular types of outcomes that might help to achieve it (not binary win- lose solutions, but creative, pie-expanding or even shared solutions).”

Justice in mediation also encompasses external developments, beliefs about human nature and legal regulation. Various jurists are drawn to mediation in the belief that litigation and adversarial warring are not the only, or the best ways to

approach conflict. And how optimistically and skeptically mediators assess the capabilities of individual parties and institutional actors to construct fair outcomes from the raw material of human conduct.

Mediation ensures a just solution acceptable to all the parties to dispute thereby achieving 'win-win' situation. It is only mediation that puts the parties in control of both their disputes and its resolution. It is mediation through which the parties can communicate in a real sense with each other, which they have not been able to do since the dispute started. It is mediation which makes the process voluntary and does not bind the parties against their wish. It is mediation that saves precious time, energy as well as cost which can result in lesser burden on exchequer when poor litigants are to be provided legal aid. It is mediation which focuses on long term interest and helps the parties in creating numerous options for settlement. It is mediation that restores broken relationship and focuses on improving the future not of dissecting past. It is based on an alternative set of values in which formalism is replaced by informality of procedure, fair trial procedures by direct participation of parties, consistent norm enforcement by norm creation, judicial independence by the involvement of trusted peers, and so on. This presents an alternative conceptualization of justice.

(emphasis supplied)

14. It was also held by the Hon'ble High Court of Delhi, in case titled as, '**Naresh chand Jain & Anr. vs. KM Tayal**', passed in, '**CM (M) 1405/2009**', dated 23.02.2012, as under :

"4. Section 89 was introduced into the Code by the amendment of 2002; the legislative intent was to encourage settlement of disputes through the mechanism of Alternate Dispute Resolution (ADR); Section 89 (2) provides that where the dispute has been referred for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed. Rules 24 & 25 of the Mediation and Conciliation Rules, 2004 also stipulates the manner in which the settlement has to be recorded and after the settlement has been recorded i.e. on the receipt of settlement, the Court, if satisfied that the parties have settled their disputes, shall pass a decree in accordance thereof. In this case there is not dispute that on 07.06.2008, a settlement had been arrived between the parties i.e. between the attorney of the plaintiff and defendant No. 1; they had signed the settlement; it is not the contention of the respondent before this Court that this settlement was obtained

from him under some kind of pressure or coercion or that he was not a party or a signatory to this settlement. In fact this settlement arrived at between the parties had been duly signed by the parties; on 07.06.2008 the matter had been referred by the referral Court; the matter had again taken up for hearing on 11.08.2008. Even on 11.08.2008, the parties had been represented through their respective counsel and the Court had recorded a positive fact finding that the parties had settled their disputes.

5. In fact a Bench of this Court in *Sh. Abdul Saliq Khan Vs. Shri Nahid Khan & Others* delivered on 25.02.2011 in RSA No. 30/2011 while dealing with the Mediation and Conciliation Rules, 2004 in this context had noted as under:-

"A cojoint cojoint reading of Rule 24 (b) and 25 (a) shows that where an agreement has been reached between the parties with regard to all the issues in the suit or proceeding of some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney; the agreement so signed shall be submitted to the Mediator/Conciliation who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending. There is then a mandate upon the court to pass a decree after the afore-noted settlement has been arrived at."

6. In the instant case as well, the parties having arrived at settlement duly signed by them which settlement was again reiterated on a subsequent date, by both the parties as also through their counsel and there being no dispute about this settlement right up to 29.08.2008 there was a mandate upon the Court to pass a decree on the aforementioned settlement arrived at between the parties.

7. The whole purpose and import of Section 89 of the Code would become frustrated if such like settlements arrived at by the will and consent of the parties are thereafter permitted to be withdrawn; moreover it was also not the contention of the petitioner before the Court below that this settlement was not arrived at between the parties; he had only sought a clarification on which application, the impugned order had relegated the parties to a regular trial. The parties are clearly bound by their settlement arrived at between them on 07.06.2008.

(emphasis supplied)

15. In the circumstances of the present case and the settled legal position, as discussed above, I do not find any merit

in the objections of the JDs and therefore, both the objections of the JDs are hereby dismissed, being devoid of any merits.

It is ordered accordingly.

Adjourned for further proceedings on **24.05.2025**.

Brijesh Kumar Garg
District Judge
Commercial Court-01
Shahdara Distt, KKD, Delhi
16.05.2025/NR