

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.160 OF 2015
(Arising out of S.L.P.(Crl.) No. 497 of 2014)

PLAINTIFF(S)	ANIL JAIN AND OTHERS	APPELLANT(S)
	Versus	
DEFENDANT(S)	STATE OF UTTAR PRADESH AND ANOTHER	RESPONDENT(S)

O R D E R

Leave granted.

The appellants preferred this appeal against the order dated 11.11.2013 read with order dated 9.12.2013 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No.2625 of 2012. By the said order, the Court refused to entertain the petition filed by the appellants under section 482 of the Criminal Procedure Code.

On notices, apart from State of Uttar Pradesh, the complainant-Respondent No.2 appeared in the Court. As the appellants and the complainant intended to settle the dispute amicably, pursuant to their suggestion, this Court allowed the appellants

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Sukhbir Paul Kaur
Date: 2015.02.03
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and the second respondent-complainant to file a Reason:

settlement agreement.

A joint application on behalf of the appellants and the second respondent has been filed enclosing the copy of Settlement Deed dated 14th January, 2015, the relevant portion of which reads as follows :-

"And Whereas the parties hereto have decided to settle the dispute leading to registration of aforesaid Check F.I.R. No. 816 of 2009 (Case Crime No. 1068 of 2009 and Criminal Crime No. 12175 of 2001 - State versus Anil Jain and others), under Sections 420, 467, 468, 471, 406 and 120B of the Indian Penal Code, 1860 at P.S. Sector 20, NOIDA, District Gautam Budh Nagar (Uttar Pradesh) and for the purpose of quashing the same either before the Hon'ble Supreme Court or High Court or Trial Court are reducing the terms in the writing for better understanding and record.

NOW THIS LEASE DEED WITNESSETH AS UNDER :-

1. The First Party till date had already paid following sum of money to the second party in respect of booking of the second party with the first party the details of payment already made is provided hereinbelow:-

Sl.No.	Amount (Rs.)	Date
1.	Rs. 5,00,000/-	1st June, 2010

2.	Rs. 7,00,000/-	5th September, 2011
3.	Rs.15,00,000/-	20th September, 2011
4.	Rs.5,00,000/-	17th March, 2011
Total	Rs.32,00,000/-	

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In view of the above total payment of Rs.32,00,000/- as stated above is already paid by the first party and received, admitted and acknowledged by the second party.

2. That total amount of full and final payment settlement amount is mutually agreed between the parties for Rs. 42,00,000/- (hereinafter referred to as "full and final settlement amount") out of which Rs. 32,00,000/- stood paid by the first party to the second party as stated in para 1 above and balance amount of 10,00,000 (Rs. Ten lakhs only) as to last instalment for full and final settlement of all the claims of the Second Party, against the First Party or as well as against Mr. Ashok Kumar Tiwari and Mr. Ravish Kumar Mishra who were also named in said Check F.I.R. No. 816 of 2009 (Case Crime No.1068 of 2009 and Criminal Crime No. 12175 of 2001- State vs. Anil Jain and others) but now resigned from company and not traceable, shall be paid conditionally in form of demand draft/banker's

cheque before Hon'ble Supreme Court provided the Check F.I.R. No. 816 of 2009 (Case Crime No. 1068 of 2009 and Crime No. 12175 of 2001 - State vs. Anil Jain and others). Under Section 420, 467, 468, 471, 406 and 120B of the Indian Penal Code, 1860 at P.S. Sector 20 NOIDA, District Gautam Budh Nagar (Uttar Pradesh) is quashed by the Hon'ble Supreme Court under Special Leave Petition (Criminal) 497/2014 with the consent of the parties.

3. The Second Party assures that the no other legal heirs of late Shri Om Prakash Kapoor have any claim or objection to the present settlement in respect of the matters pertaining and incidental to the dispute regarding the aforesaid flat with the Second Party alone. The Second Party undertakes to settle all the claims of other legal heirs of his late father Shri Om Prakash Kapoor if any raised by any of his other legal heirs to the complete exclusion of the first party and further hereby agree to keep the first party indemnify in respect of such claims in all times to come.
4. The Second Party had availed home loan

vide home loan agreement dated 28.8.2007 with tripartite agreement from company known as M/s Dewan Housing Finance Corporation Ltd. (the said loan was first taken from First Blue Home Finance Limited earlier known as Deutsche Postbank Home Finance Limited and prior to that Birla Home Finance Limited and now known as M/s Dewan Housing Finance Corporation Ltd.)(hereinafter referred to as "disbursing bank")for the purpose of booking the aforesaid flat.

5. That the said M/s Dewan Housing Finance Corporation Ltd. being disbursing bank has filed the arbitration proceedings against the second party and further obtained an ex parte award dated 24.4.2012 passed by Shri Anil Bhasin Sole Arbitrator and in respect of said award dated 24.4.2012 the Executive application No.65/2014 before Ld. District Judge, Gautam Budh Nagar at Noida, Uttar Pradesh is also pending. The second party had not accepted the said award dated 24.4.2012 and further filed the application for setting aside the award under Section 34 of the A&C Act 1996 before Delhi High Court and

challenge to said award is pending before Hon'ble Delhi High Court vide petition bearing No. OMP/63/2015.

6. That it is agreed between the parties

that second party shall duly prosecute said OMP/63/2015 and whereas the cost of litigation and counsel fee for litigating the said award dated 24.4.2012 and all consequent proceedings arising out or in relation to said award shall be borne by the first party.

7. It is further agreed between the parties that in case of dismissal of said application OMP/63/2015 on any ground, the second party shall further file appeal as provided under Section 37 of the Arbitration and Conciliation Act to challenge any order passed under OMP/63/2015 and further SLP before the Hon'ble Supreme Court of India in order to challenge the said award dated 24.4.2012 as per all possible way provided under the Arbitration and Conciliation Act or under any other act or law time being in force which provides remedy against the award. The obligation of second party to challenge the said award shall also apply in respect of remand

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back proceedings or otherwise in respect of said award dated 24.4.2012.

It is also agreed between the parties that the First Party is free to attempt mediation and negotiate settlement of the dispute with the disbursing bank on behalf of the Second Party to amicably settle the dispute as per its sole discretion.

It is further agreed that the Second Party shall give full co-operation to the first party in this regard.

8. That is further agreed between the parties that apart from payment of aforesaid full and final settlement amount liability of M/s Dewan Housing Finance Corporation Ltd. as arising out of home loan taken by the second party in respect of flat in question shall be cleared by first party and for said purpose the second party shall be duty bound to extend all co-operation to the first party to litigate with said disbursing bank and /or to arrive out the amicably settlement.

9. The parties hereto agree that the allotment of said flat in name of Second Party stands cancelled in perpetuity and the Second Party shall

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not have any right, claim or interest in the same upon payment in terms of para 1 above.

10. That the parties hereto shall file appropriate application before Hon'ble Supreme Court of India that the SLP (Criminal) No.497 of the 2014 praying that said SLP may be disposed off in terms of the present settlement and

that the F.I.R. and proceedings arising out of the same may please be quashed and immediately on passing of such order for quashing of FIR the last instalment of Rs.10 lac by way of DD shall be handed over to the second party.

11. That it has been agreed between the parties that after quashing of said FIR by Hon'ble Supreme Court liability to clear bank dues/outstanding against the Second Party i.e. Dr. Sanil Kapoor and Richu Kapoor (the Second Party to the settlement deed) in respect of the home loan availed for proposed flat shall be of the First Party. The First Party shall settle the aforesaid dues and hand over no-dues certificate to the Second Party after obtaining the same from the disbursing bank in due course

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after negotiating full and final amount payable to the disbursing bank in due course.

12. This agreement constitutes the settlement of disputed claims. It does not and shall not constitute an admission of liability by either of the parties. The parties declare and approve that both the parties have settled all their disputes amicably.

13. The parties declare and approve that it has been settled that the Second Party will not claim any amount on arising out of and incidental to the matter of booking of flat no.J-202, situated at the Second Floor in Alstonia Apartments, Plot No.GH-10, Sector Pi I and II, Greater Noida, District Gautam Budh Nagar (Uttar Pradesh) which led to registration of aforesaid FIR, from the First Party in future nor will he file any such claim against the First Party in any Court of Law concerning the aforesaid matter of booking of flat or matters incidental thereto nor file any criminal case nor any Civil Suit against the First Party.

14. That the parties agree that should any portion of this Agreement be

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judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

15. That it is further agreed between the parties in case the Check F.I.R. No. 816 of 2009 (Case Crime No. 1068 of 2009 and Criminal Crime No. 12175 of 2001 -State vs. Anil Jain and Others) is not quashed by the Hon'ble Supreme Court on account of any reasons then the parties hereto agree

to file the quashing petition under Section 482 of Cr.P.C. before the Hon'ble Allahabad High Court to quash the Check F.I.R. NO.816 of 2009 (Case Crime No. 1068 of 2009 and Criminal Crime No. 12175 of 2001- State Vs. Anil Jain and Others) and all proceedings arising out of same and in such a eventuality agreed amount of Rs.10 lac shall be paid before Hon'ble High Court immediately on pronouncing the quashing order by Hon'ble High Court of Check F.I.R. No. 816 of 2009 (Case Crime No.1068 of 2009 and Criminal Crime No. 12175 of 2001 - State vs. Anil Jain and

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Others).

16. That the parties agree that nothing in this shall be modified, altered, amended, or otherwise changed except upon written consent by each of the parties hereto and the said modification, alteration, amendment, or change otherwise shall also be reduced to writing and the parties shall duly sign the same with proper attestation of two witnesses and adhere to the terms and condition as mentioned therein.
17. This agreement constitutes the entire agreement among the parties, and there are no other understanding or agreements, written or oral, among them on the subject.
18. The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this agreement shall operate solely to the benefit of the parties to this agreement.
19. That this Agreement as aforesaid has been executed and signed by the

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parties voluntarily, after reading, understanding and thinking which shall and is acceptable and binding on all the parties and their representatives and successors".

The Settlement Agreement has been signed jointly by the parties including the complainant and their learned counsel.

In view of the settlement reached between the parties, we allow the prayer and set aside the impugned order dated 11.11.2013 read with order dated 9.12.2013 passed by the High Court of Judicature at Allahabad in

Criminal Miscellaneous Application No. 2625 of 2012 and quash the proceedings pursuant to F.I.R. No. 816 of 2009 (Case Crime No. 1068 of 2009 and Criminal Case No. 12175 of 2010 - State versus Anil Jain & others), under Sections 420, 467, 468, 471, 406 and 120B of the Indian Penal Code, 1860 at P.S. Sector 20, NOIDA, District Gautam Budh Nagar (Uttar Pradesh) and any order passed pursuant to the said proceedings. The parties will abide by the settlement.

In terms of the said settlement, the appellants have also handed over a demand draft No. 141807 dated 14.1.2015 for Rs.10,00,000/- in favour of the second respondent to the learned counsel for the second respondent for onward transmission to the second respondent.

The appeal is allowed with the aforesaid observations.

.....J.
(Sudhansu Jyoti Mukhopadhaya)

.....J.
(N.V. Ramana)

New Delhi,
January 22, 2015

ITEM NO.33

COURT NO.4

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SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 497/2014

(Arising out of impugned final judgment and order dated 11/11/2013 in CRLMA No. 2625/2012,09/12/2013 in CRLMA No. 2625/2012 passed by the High Court Of Judicature at Allahabad)

ANIL JAIN & ORS

Petitioner(s)

VERSUS

STATE OF U.P & ANR

Respondent(s)

(with appln. (s) for stay and office report)

Date : 22/01/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s)

Mr. Farrukh Khan, Adv.
Mr. Faisal Ishtiaque, Adv.
For Mr. Rameshwar Prasad Goyal, Adv.

For Respondent(s)

State of U.P.

Mr. Abhishth Kumar, Adv.
Mr. Som Raj Choudhury, Adv.
Ms. Archana Singh, Adv.

Ms. Preetika Dwivedi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Sukhbir Paul Kaur)

(Suman Jain)

Court Master

Court Master

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(Signed order is placed on the file)