* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 5th August, 2025.
Pronounced: on: 19th August, 2025.

\+ CRL.M.C. 1105/2019 & CRL.M.A. 34565/2024

PROFESSIONALTECHNICAL SERVICES .....Petitioner

Through: Mr. Pratap Singh, Mr. Navneet Sharma and Mr. Ajay Sharma, Advocates.

versus

PAVITRA MILK PRODUCTS PVT. LTD. & ORS. .....Respondents

Through: Mr. Durgesh Kumar Pandey and Ms. Ritika Davis Franklin, Advocates for R-1 to 3.
Mr. Vishal Ahluwalia, Respondent No. 4 (through VC).

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

CRL.M.A. 34565/2024 *(on behalf of Petitioner seeking permission to file amended petition)*

1. For the grounds and reasons stated in the application, the same is allowed and the amended petition is taken on record.

2. Disposed of.

CRL.M.C. 1105/2019

3. The Petitioner, who is the Complainant in CIS Case No.

4991781/2016, under Section 138 of the Negotiable Instruments Act, 1881[1] has invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973[2] (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) and Article 227 of the Constitution of India, 1950 assailing order dated 3rd November, 2017[3] passed by the Metropolitan Magistrate,[4] NI Act-02, South West, Dwarka. The impugned order observed that the Settlement Agreement dated 29th September, 2016,[5] executed between the parties, was null and void.

4. The genesis of the dispute arises from a cheque bearing No. 264730 dated 25th June, 2015, for an amount of INR 22,43,400/-, allegedly issued by the Respondents towards discharge of their liability for supply of material by the Petitioner. Upon presentation, the cheque was dishonoured with the endorsement "insufficient funds." Consequently, the Petitioner instituted a complaint under Section 138 of the NI Act in December, 2015 against the Respondents. Following preliminary inquiry, Respondents No. 1 to 3 were summoned to face trial.

5. At the request of the parties, the Magistrate referred them to the Mediation Centre at Dwarka Courts, where they purportedly resolved their disputes and executed a Settlement Agreement dated 29th September, 2016. Under its terms, the Respondents undertook to pay INR 22,43,400/- towards full and final settlement of the Petitioner's claims. Of this, a sum of INR 2,43,500/- was to be deposited directly in the Petitioner's bank account and the balance was to be discharged in instalments through six post-dated

[1] "the NI Act"
[2] "Cr.P.C"
[3] "the impugned order"
[4] "the Magistrate"

cheques[6] as per the agreed schedule. The Agreement expressly provided that dishonour of any PDC would render the settlement null and void. It was further agreed that the Petitioner would withdraw the complaint, along with other related proceedings concerning the same transaction, within one week of receiving the first two instalments.

6. In partial performance of the Agreement, a sum of INR 2,43,500/- was paid to the Petitioner by way of demand draft on 20th December, 2016 during proceedings before the Magistrate. However, the parties did not adhere to the remaining terms. The record of proceedings indicates that on 4th January, 2017, the Respondents undertook to pay the PDCs as per the Agreement, however, they failed to do so. Thereafter, on 7th January, 2017 and again on 18th February, 2017, it was jointly submitted by the parties that the settlement had failed, a statement duly noted in the proceedings.

7. In the wake of the above development, the Magistrate proceeded to serve notice on the Respondents under Section 251 of Cr.P.C thereby commencing trial on the underlying complaint.

8. Subsequently, by the impugned order dated 3rd November, 2017, the Magistrate observed that the proceedings recorded on 18th February, 2017 reflected that the settlement had failed and consequently, rendered "null and void" owing to non-compliance by the Respondents. On this reasoning, the Magistrate directed the Petitioner to return the sum of INR 2,43,500/- received under the Agreement and ordered that the complaint be adjudicated on its merits.

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[5] "the Settlement Agreement"/ "the Agreement"
[6] "PDCs"

ARGUMENTS ADVANCED

9. Counsel for the Petitioner assails the correctness of the procedure adopted by the Trial Court, contending that since a settlement was voluntarily executed between the parties and in fact undertakings given to the Court were partly acted upon through an initial payment, the Settlement Agreement could not have been declared null and void. It is urged that the proper course, in the event of breach by the Respondents, was to enforce the terms of the Agreement in accordance with the decision judgment of Division Bench of this Court in ***Dayawati v. Yogesh Kumar Gosain***,[7] wherein it was held that if an accused fails to comply with a mediated settlement, the Magistrate is empowered to invoke Section 431 read with Section 421 Cr.P.C for recovery of the agreed amount as a fine. In the said case, the Court further clarified that breach of an undertaking given before a Magistrate could attract recourse to other appropriate measures, including proceedings under Section 2(b) of the Contempt of Courts Act, 1971, to secure compliance with the undertaking and orders passed thereon.

10. It is further urged that valuable judicial time had been invested in facilitating the settlement and the Respondents cannot be permitted to abuse the process by first voluntarily entering into a mediated agreement, making part-payment thereunder and thereafter repudiating it. The proceedings under Section 138 of the NI Act stood compromised by the parties of their own volition and Respondent No. 2, as CMD of the accused company, had even tendered the first instalment in partial performance. Significantly, both the execution of the Agreement and the part-payment were independent, consensual acts of the parties, not compelled by any judicial order. Having

consciously accepted and acted upon the settlement, the Respondents later cannot be permitted to resile from the same.

11. It was next contended that the impugned order dated 3rd November, 2017 is unsustainable, as the Magistrate failed to appreciate that in a summons trial, the Court has no inherent power to direct restitution of monies already paid merely because the accused defaulted in honouring the mediated settlement. By ordering return of the first instalment to the accused, the Magistrate acted beyond jurisdiction, since the correct recourse in law was to enforce compliance with the terms of settlement rather than undo it.

12. In response, counsel for the Respondents supported the impugned order, contending that the Settlement Agreement had expressly stipulated that dishonour or non-payment of any of the PDCs cheques would render the compromise "null and void." Once the Respondents were unable to discharge the subsequent instalments in terms of the agreed schedule, the Settlement Agreement itself stood frustrated by operation of its own terms as duly acknowledged by both the parties in the proceedings before the Magistrate.

13. As regards the payment of INR 2,43,500/-, it was submitted that the same was made only as part-performance of the overall settlement and could not be treated as an independent liability once the settlement itself was rendered void. Accordingly, the Trial Court was justified in directing refund of the said sum to restore status *quo ante* and to permit adjudication of the complaint on merits.

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[7] 2017:DHC:6199-DB

ANALYSIS

14. The Court has considered the afore-noted facts and contentions and perused the material on record. The Settlement Agreement was executed through a court-referred mediation, pursuant to which part-payment of INR 2,43,500/- was admittedly made on 20th December, 2016 before the Magistrate. However, default ensued when the PDCs contemplated under the Agreement were not furnished. The Petitioner contended that the mediated terms continue to be enforceable in law notwithstanding such default and that the balance amount is liable to be recovered in terms of Section 431 read with Section 421 of Cr.P.C. The challenge, therefore, centres on whether the impugned orders declining enforcement of the mediated terms accord with the legal position articulated by the Division Bench in ***Dayawati***.

15. In this regard, we must first note the following observations made by the Division Bench of this Court in ***Dayawati***:

> *"XIII. What is the procedure to be followed if in a complaint case under Section 138 of the NI Act, a settlement is reached in mediation?*
>
> *xxx ... xxx ... xxx*
>
> *104. Binding the parties to a settlement agreement entered into through a formal mediation process and being held accountable for honouring the same is really enforcing the legislative mandate in enacting Sections 138 and 147 of the NI Act i.e. to ensure an expeditious time bound remedy for recovery of the cheque amounts. Breach of a lawful entered agreement would not only frustrate the parties to the mediation, but would be opposed to the spirit, intendment and purpose of Section 138 of the NI Act and would defeat the ends of justice. The courts cannot permit use of mediation as a tool to abuse judicial process.*
>
> *105. There is no legal prohibition upon a criminal court seized of such complaint, to whom a mediated settlement is reported, from adopting the above procedure.* ***Application of the above enunciation of law to a mediation arising out of a criminal case manifests that a settlement agreement would require to be in writing and signed by the parties or their counsels. The same has to be placed before the court which has to be satisfied that the agreement was lawful and consent of the parties was***

voluntary and not obtained because of any force, pressure or undue influence. Therefore, the court would record the statement of the parties or their authorized agents on oath affirming the settlement, its voluntariness and their undertaking to abide by it in the manner followed by the civil court when considering a settlement placed before it under Order XXIII Rule 3 of the CPC. The court would thereafter pass an appropriate order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the NI Act and the undertakings of the parties. The court taking on record the settlement stands empowered to make the consequential and further direction to the respondent to pay the money in terms of the mediated settlement and also direct that the parties would remain bound by the terms thereof.

106. ***In having so proceeded, there is a satisfaction of the voluntariness and legality of the terms of the settlement of the court and acceptance of the terms thereof as well as a specific order in terms thereof. Consequently, the amount payable under the settlement, would become an amount payable under an order of the criminal court.***

107. So far as the disputes beyond the subject matter of the litigation is concerned, upon the settlement receiving imprimatur of the court, such settlement would remain binding upon the parties and if so ordered, would be subject to the orders of the court.

XIV. ***Breach of such settlement accepted by the court – consequences?***

108. The instant reference has resulted because of the failure of the court to have recorded the settlement and undertakings binding the accused person in the complaint under Section 138 of the NI Act to abide by the settlement arrived at during mediation. There can be no manner of doubt that once a settlement is reported to the court and made the basis of seeking the court's indulgence, the parties ought not to be able to resile from such a position. So what is the remedy available to a complainant if the respondent commits breach of the mediation settlement and defaults in making the agreed payments?

109. Let us examine as to whether the legislature has provided any mechanism in the Cr.P.C. for recovery of monetary amounts.

110. We have extracted Section 421 of the Cr.P.C. above which provides the mechanism to recover fines, by issuing a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender and/or by issuing a warrant authorizing the realization of amounts as arrears of land revenue from movable and immovable property of the defaulter.

111. ***In the event of either party resiling from the agreed upon settlement which has received the imprimatur of the court, the party attempting to breach the settlement and undertaking cannot be permitted to avoid making the payment****. Such party also should not be allowed to*

violate such undertaking given to the opposite side as well as the court.

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? 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 mediated settlement vis-à-vis the complaint case?

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.

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."

[Emphasis Supplied]

16. The Division Bench in ***Dayawati*** authoritatively settled the procedure to be followed in cheque dishonour complaints where mediation results in a settlement. A bare reading of the aforesaid extract reveals that Division Bench, after an exhaustive analysis of the legal position, observed that a mediated settlement in criminal compoundable offences, before the Mediation Centre, has the same binding effect as any lawful agreement. Upon being placed before the Court, it can be acted upon, as a final order, in

the nature of compounding. The judgment, however, makes it clear that the enforceability of such settlement is contingent upon the Court accepting the terms of the settlement and also recording that the settlement has arrived at voluntary, with the consent of the parties. Once this satisfaction is recorded, the Court is required to pass a judicial order accepting the settlement and incorporating its terms, including any payment obligations under Section 147 of the NI Act. Only upon such an order being passed, signifying the Court's imprimatur, can the agreed sum be treated as an amount payable under an order of a criminal court.

17. The Division Bench further clarified that where a mediated settlement has been accepted and recorded by the Court, any breach of its terms by one of the parties, particularly the accused, cannot be permitted to frustrate the settlement or evade compliance. In such cases, the Court is empowered to enforce the undertaking through appropriate legal mechanisms, including proceedings under Section 431 read with Section 421 of Cr.P.C and, where applicable, contempt jurisdiction. However, in the absence of a judicial order accepting the mediated settlement, no enforceable rights arise under the criminal process and the aggrieved party must seek other appropriate remedies in accordance with law.

18. Having regard to the law expounded in ***Dayawati***, the central issue, therefore, is whether the mediated settlement between the parties had ever attained the imprimatur of the Court so as to transform into an order binding upon them. The answer to this question is determinative of whether the Petitioner can invoke Section 431 read with Section 421 of Cr.P.C for recovery of the settlement amount.

19. At this juncture, for the ease of reference, it is considered appropriate

to reproduce the relevant portion of the impugned order dated 3rd November, 2017, which reads as under:

> *"The matter is pending for consideration of notice. However, ld. Counsel for the complainant submits that settlement arrived at in the present case be enforced in the light of the recent judgment of the Hon'ble High Court of Delhi titled as Daya Wati vs. Yogesh Kumar Gosain in Crl. Ref. No.1/2016 dated 17.10.2017.*
>
> *Perusal of the ordersheet dated 18.02.2017 reveals that the settlement was declared null and void as the same had failed. Ld. Predecessor Court had directed the complainant to return the money already paid in pursuance of the settlement. The matter was to be proceeded with on merits.*
>
> *No settlement thereafter was entered into between the parties pursuant to such observations made by the Ld. Predecessor Court vide the said order.*
>
> *Thus, no settlement is in existence as on date and hence, the question of enforcement does not arise.*
>
> *The arguments of Ld. Counsel for the complainant is accordingly invalidated.*
>
> *Since the matter has been freshly transferred today itself and the Board is heavy, the matter stands adjourned.*
>
> *Re-notify for consideration of notice on **15.01.2018**."*

20. It thus, emerges that although a written settlement was drawn up at the Mediation Centre and part-payment of INR 2,43,500/- was made, the Respondents defaulted almost immediately. However, the Magistrate did not pass any order formally accepting the terms of the settlement, as mandated in ***Dayawati*** for enforceability under Section 431 read with Section 421 of Cr.P.C. Crucially, the record reflects that the parties themselves jointly stated before the Magistrate on two occasions i.e. on 7th January, 2017 and 18th February, 2017, that the settlement had failed. Therefore, the pre-condition for treating the mediated settlement as an enforceable judicial order, a clear judicial imprimatur, is absent in this case. Accordingly, the legal consequences that flow from a breach of a court-accepted mediated settlement, as recognised in ***Dayawati***, do not arise here. For completeness,

the relevant judicial orders recording the failure of settlement are reproduced below:

> *"07.01.2017.*
>
> ***On regular Stenographer of the Court has been withdrawn until further orders.***
>
> *Present: Sh. Vikas Rastogi, AR of the complainant.*
> *Accused no.2 in person.*
> *Pass over is requested. Allowed. Be taken up at 11 a.m.*
>
> *Sd/-*
> *(Harjeet Singh Jaspal)*
> *MM/N.I.Act-02/South West*
> *Dwarka, Delhi*
> *07.01.2017*
>
> *at 12.08 p.m.*
> *Present: Sh. Vikas Rastogi, AR of the complainant.*
> *Accused no.2 alongwith Ld. Counsel Sh. P. P. Goniyal.*
> ***It is jointly stated that the settlement has failed.***
>
> ***Let the matter be proceeded on merits.***
>
> *Be put up for arguments on notice/further proceedings on 27.01.2017.*
>
> *Sd/-*
> *(Harjeet Singh Jaspal)*
> *MM/N.I.Act-02/South West*
> *Dwarka, Delhi*
> *07.01.2017"*

> *"18.02.2017.*
>
> *Present: Ld. Counsel Sh. Pratap Singh on behalf of the complainant alongwith AR, Sh. Vikas Rastogi.*
> *Accused no.1 is a company.*
> *Accused no.2 in person alongwith Ld. Counsel Sh. P. P. Goniyal.*
> ***It is once again stated that the settlement has failed.***
>
> ***The complainant is directed to return the money taken form the accused in the course of proceedings.***
>
> *Let the matter be proceeded on merits.*
> *All the accused persons, namely, Shribhagwan, Guneeta, Vishal Ahluwalia, are directed, through their counsel, to be present before the Court on NDOH.*
> *Be put u pfor arguments on notice on 06.03.2017.*
>
> *Sd/-*
> *(Harjeet Singh Jaspal)*
> *MM/N.I.Act-02/South West*
> *Dwarka, Delhi*

18.02.2017"

[Emphasis Supplied]

21. Additionally, it must be emphasized that the Settlement Agreement though reached through court-referred mediation, did not contemplate any request for the Court to accept or enforce its terms, rather the document reads more as a private arrangement. On its face, the Agreement itself makes enforcement conditional upon actual performance. It provides that the Petitioner would withdraw pending complaints only upon receipt of specified instalments, and further contains a self-executing clause rendering the settlement void upon default. These stipulations underscore that the parties themselves envisaged private enforcement of obligations, with liberty to revert to pending proceedings in the event of breach, rather than judicial validation or intervention. The relevant clauses of the Agreement read as follows:

> "*3. That, after receipt of first installment as agreed above, the complainant shall execute a work contract with the respondent no. 1 and install the Ucrete System Plant for which the respondents shall pay additional sum on the basis of the rates, as may be agreed between the parties.*
> *4. That the respondents shall help the complainant company to execute a separate sub-contract for application of the material which was purchased from the complainant and which is already lying on the site of the respondent no. 1.*
> *5. That the above sub-contract will not have any bearing on this settlement.*
> *6. That the respondent no. 1 shall not raise any grievance regarding the material applied on its flooring. The terms and conditions of the sub-contract will be reduced into writing separately with mutual agreement.*
> *7.* ***That the complainant shall withdraw the present complaint before the Hon'ble Referral Court as well as other pending cases, if any, in respect to the present complaint relating to business transaction, within one week, after receipt/realization of first two installments, as agreed above.***
> *8.* ***That in case the respondents fail to pay the settled amount as***

agreed above or in case of dishonor of the above said PDCs, the settlement shall become null and void and the complainant shall be at liberty to take action against the respondent in respect of the present case as well as the dishonored PDCs, as per law."

[Emphasis Supplied]

22. Clause 8 itself specifies, in the event of default or dishonour of the PDCs, "*the settlement shall become null and void and the complainant shall be at liberty to take action against the respondent in respect of the present case as well as the dishonoured PDCs, as per law*." The contractual framework, therefore, was that the Petitioner's remedy upon default lay in resuming prosecution of the pending complaint under Section 138 of the NI Act, not in seeking restitution of sums already received. These clauses, when read with the ruling of the Division Bench in ***Dayawati***, make it evident that, absent judicial affirmation and incorporation into a formal order, the Agreement, even if concluded through mediation, remains a private contractual arrangement. It cannot be clothed with the enforceability contemplated under Section 431 read with Section 421 of Cr.P.C.

23. It must also be noted that the Respondents disclosed that after the Settlement Agreement, the parties entered into yet another purported arrangement dated 9th March, 2017 for an enhanced sum of about INR 32,00,000/-. Pursuant thereto, Respondents No. 1 to 3 are said to have paid INR 10,00,000/-, while a further cheque of INR 12,00,000/- was dishonoured, giving rise to a fresh complaint under Section 138 of the NI Act, which is presently pending. The Petitioner disputes any nexus between this subsequent arrangement and the earlier Settlement Agreement. Be that as it may, without entering into the disputed merits of this later understanding, it is sufficient to observe that neither of the two arrangements

ever received the imprimatur of the Court. Both, therefore, retain the character of private settlements and do not fall within the framework of enforcement contemplated under Section 431 read with Section 421 of Cr.P.C.

24. It is further relevant to observe that Respondent No. 4 was neither a signatory to the Settlement Agreement nor summoned as an accused in the underlying complaint. His impleadment was only in his representative capacity as the Chief Executive Officer of the accused company. In these circumstances, the Settlement Agreement, even if otherwise enforceable, could not have been extended to bind him personally.

25. It also deserves emphasis that the direction contained in the orders dated 18th February, 2017 and reiterated on 3rd November, 2017, requiring the Petitioner to return the amount received under the mediated settlement, travelled beyond the remit of the Trial Court. Such a direction, in substance, sought to undo part-performance of the Agreement by compelling restitution, notwithstanding that there was no judicial finding of fraud, coercion, misrepresentation or any other circumstance vitiating the agreement. Once the Settlement Agreement was admittedly executed voluntarily, it could not have been nullified indirectly through an order mandating refund of the consideration received, in the absence of such a finding. Accordingly, the directions requiring restitution, to that extent, are held unsustainable and stand set aside.

26. In the same vein, it must be noted that notwithstanding Clause 8 of the Settlement Agreement, this Court is of the view that the Magistrate could not, in a summons trial, declare the private settlement "null and void" *inter se* the parties. The Trial Court's remit, under the principles laid down by

Dayawati, was confined to either (i) accepting and recording a lawful, voluntary settlement and then proceeding in accordance with law, or (ii) if no such judicial imprimatur existed, simply directing that the complaint be proceeded on merits. To the extent the orders dated 18th February, 2017 and 3rd November, 2017 purport to pronounce the settlement "null and void" as a matter of contractual validity, they travel beyond jurisdiction and are accordingly set aside/ read down as a direction that the mediated terms were not accepted by the Court and are unenforceable in the criminal proceedings. Any consequences of alleged breach (including those adverted to in Clause 8) must be worked out, if at all, in appropriate civil/criminal proceedings independent of the compounding framework.

27. With the above direction, the present petition is disposed of, along with pending application.

28. It is clarified that the complaint pending before the Magistrate shall proceed in accordance with law and be adjudicated on its own merits, uninfluenced by any observations made in the present order.

SANJEEV NARULA, J

AUGUST 19, 2025
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