



**PSL** Advocates  
& Solicitors

**USHA BANSAL V. GENESIS  
FINANCE CO. LTD.**

2023 SCC OnLine Del 7820



In a recent landmark judgment, the Hon'ble High Court of Delhi addressed the issue of challenging a Settlement Agreement under Section 34 of the Arbitration and Conciliation Act, 1996. The importance of willingly participating in mediation and the legally enforceable nature of settlement agreements have been highlighted by the court's decision.

**FACTUAL BACKGROUND:**

The dispute in this case originated from a loan transaction that took place between the borrowers, i.e., Mr. Sanjeev Bansal and Mrs. Usha Bansal ('Petitioners'), and Genesis Finance Co. Ltd ('Respondent'). The Petitioners had taken a loan from the Respondent and had mortgaged their property as the security thereof. Subsequently, a dispute arose from the transaction, falling within the ambit of The Commercial Courts Act, 2015, (hereinafter referred to as "The CC Act"). In accordance with Section 12A of The CC Act, the parties resorted to mediation and accordingly entered into a settlement. The terms of the settlement were reduced to writing and signed by the parties in per Section 12A (4) and (5) of The CC Act, 2015. It is pertinent to note that Section 12A provides that such a Settlement Agreement would have the same status and effect as if it is an arbitral award on agreed terms under Section 30(4) of The Arbitration and Conciliation Act, 1996.

Subsequently, the Petitioner, i.e. Usha Bansal, w/o Sanjeev Bansal, challenged the validity of the said settlement agreement, claiming that the agreement was neither signed by her, nor was her husband authorized to sign on her behalf and that the Settlement Agreement (hereinafter, 'settlement') was obtained through fraud, coercion, and undue influence.

**ISSUES:**

1. Whether the petitions were filed within the period of limitation?
2. Whether the impugned Settlement Agreement warranted interference in the exercise of the jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996?

**CONTENTIONS:**

The Petitioner contended that the parties did not receive a copy of the Settlement Agreement and that they came to know of it only upon receiving the copy of the execution petition filed by the Respondent. The Petitioner further claimed that the Delhi High Court Mediation Centre got the settlement Agreement signed from the parties under "undue influence and coercion" by the Respondent and that the Settlement Agreement completely ignored the fact as to how the liability of Rs. 3,87,90,299/- became Rs. 14,23,35,065/- (under the Settlement Agreement within a period of five months). The Petitioner also averred that the interest rate prescribed in the Settlement

Agreement was excessive and that the learned mediator acted in an illegal and *mala fide* manner by merely recording the terms and condition sent by the Respondent.

#### **FINDINGS OF THE COURT:**

The Hon'ble Delhi High Court examined the facts and derived the conclusion that the Petitioner did sign the Settlement Agreement. The Court clarified that a settlement agreement as per Section 12A of The Commercial Courts Act, 2015, comes into force only once it is reduced to writing and signed by the parties to the dispute along with the mediator. Therefore, without the signatures of the Petitioner, the Settlement Agreement simply could not have come into existence. The fact that the Settlement Agreement was bearing the signature of the Petitioner, undermined the claim of non-supply of copy of the Settlement Agreement. Additionally, the Hon'ble Court also took note of the emails sent by the Petitioner which clearly recorded the Petitioner's authorisation in favour of her husband to appear, represent, act or sign on her behalf. The Court further clarified that the contention that the Settlement Agreement is vitiated in as much as the same does not take note of the previous communication addressed by the Respondent wherein a lower amount was reflected to be the outstanding amount, has no bearing whatsoever on the validity of the Settlement Agreement nor can it lead to any inference of duress or coercion.

Further, it was held that even if the court grants a benefit of the doubt to the Petitioners as regards the issue of limitation, it is noteworthy that the plea of coercion, undue influence, or fraud raised by the petitioners cannot be taken lightly. The Court held that a bare plea of fraud, coercion or duress cannot justify a challenge to the Settlement Agreement under Section 34 proceedings. Placing reliance on *Bisbnudeo Narain v. Seogeni Rai*, *A.C. Ananthaswamy v. Boraial*<sup>ii</sup>, the Court clarified that the degree of proof required in such cases is extremely high and particularly, in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars rather than general allegations. The court also reiterated *Unikol Bottlers v. Dhillon Kool Drink*<sup>iii</sup>, wherein, four factors were laid down to ascertain whether any duress or coercion has been played upon any party in a commercial contract:

- i. Did the plaintiff protest before or soon after the agreement?
- ii. Did the plaintiff take any steps to avoid the contract?
- iii. Did the plaintiff have an alternative course of action or remedy? If so, did the plaintiff pursue or attempt to pursue the same?
- iv. Did the plaintiff convey benefit of independent advise?

The Court observed that in order to prove elements of fraud, undue influence and coercion, parties must submit material record and conduct. However, the same were absent in the this case. Moreover, an objective reading of the terms of the Settlement Agreement revealed the parties' free consent and mutual intention to establish a final and binding contract. The Settlement Agreement itself contained clauses explicitly stating that it was entered into voluntarily. The court also stressed on the petitioners' failure to protest during or after mediation highlighting their voluntary participation and *consensus ad idem*. Further, the court observed that even if there was lack of consensus between the parties, the Petitioners had the choice to defend their stand on merits in the commercial suit. However, they did not do so.

The Court reiterated that if amicable settlements are discarded on flimsy pleas, it would discourage parties from entering into negotiated settlements and making payments thereunder, as a shrewd party may pocket the amount received under the Settlement Agreement and thereafter challenge it and re-agitate the dispute resulting into immeasurable loss and harassment to the party making payment thereunder. Accordingly, the petition was dismissed.

#### **PSL OPINION:**

The judgment has adequately clarified that Contracts are meant to be performed and not avoided. Therefore, once an amicable Settlement Agreement has been entered into, it would not stand vitiated on a bare plea of fraud, duress or coercion, unless some credible evidence is presented to support such pleas as the degree of proof required in such cases is fairly high. A party pleading fraud is obliged to set forth particulars pertaining to such alleged fraud and a general allegation would not suffice. Additionally, the judgment is a welcome move towards giving effect to the legislative intent behind Section 89 of the Code of Civil Procedure, 1908, The Arbitration and Conciliation Act, 1996 as well as The Legal Services Authorities Act, 1995, which cast a duty upon the Courts to encourage amicable settlement of legal disputes between the parties.

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<sup>i</sup> 1951 SCC 447

<sup>ii</sup> (2004) 8 SCC 588

<sup>iii</sup> (1994) 28 DRJ 482