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

+ **CONT.CAS(C) 698/2014**

SUNITA TAKWAL Petitioner
Through Mr. Ravindra S. Garia, Advocate

versus

SANDEEP TAKWAL Respondent
Through Mr. K. Venkatraman and Mr. Sudhir
Mathur, Advocates

% Reserved on : 16th July, 2015
Date of Decision: 23rd July, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Petitioner alleges non compliance of undertaking/settlement/statement dated 19th August, 2013 given before the MM Mahila Court, East Karkardooma Court whereby the respondent had agreed to deposit a sum of Rs. 5000/- per month by the 10th day of each month in a saving account for petitioner's use and had assured to maintain the first party and their daughter.
2. Learned counsel for the petitioner, through this contempt petition, claims that due to the additional needs with respect to necessities, survival, education and medical treatment of the petitioner and her daughter, they

require at least Rs. 30,000/- per month.

3. Furthermore, learned counsel for the petitioner also alleges that the respondent is now trying to forcibly evict the petitioner from her matrimonial home in gross contempt of the aforesaid undertaking.

4. Learned counsel for the respondent has raised a preliminary objection with regard to the maintainability of the present contempt proceeding on the ground that the petitioner has already filed an execution petition.

5. This Court finds that the amount of Rs. 30,000/- claimed by the petitioner is nowhere stipulated in the settlement agreement entered into between the parties.

6. It is settled law that the standard of proof to sentence a contemnor is that of a criminal proceeding and the breach would have to be established beyond reasonable doubt. [See *All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Others*, (2009) 5 SCC 417]. Consequently, in the present proceedings it cannot be concluded that there is wilful disobedience of the order dated 19th August, 2013.

7. This court is also in agreement with learned counsel for the respondent that since the petitioner has availed of an alternate remedy, the contempt petition should not be entertained.

8. A similar argument was rejected by this Court in *Jamna Datwani Vs. Kishin Datwani & Ors. MANU/DE/4122/2014*. In the said judgment it was held as under:-

“5. It was pointed out to the learned counsel for the petitioner that the respondent is stated to have paid a sum of Rs.3,60,000/- out of a sum of Rs.5 lacs and for realization of the balance amount, the petitioner is free to go to the civil court by invoking the provisions of Order 39 Rule 2A CPC or to seek execution of

the order passed by the court for recovery of money. However, the learned counsel, instead of accepting the said course had contended that this is a case of gross contempt on the part of the respondent inasmuch as the directions of the court have not been complied. For this purpose, the learned counsel for the petitioner has relied on Lopaben Patel vs. Hitendra Rambhai Patel; 2000 Cri. LJ 2709, Shankerpuri Chanpuri Goswami vs. Abdulhakim Asmadmahamad; (1985) ILLJ 281 Guj., Mira Bose vs. Santosh Kumar Bose; AIR 1973 Calcutta 483 (V 60 C 111), Jyotirmoyee Debi vs. Assistant Settlement Officer and Others; AIR 1973 Calcutta 486 (V 60 C 112) and Sarladevi Bharkatkar Rungta vs. Bharkatkar Shivprasad Rungta & Anr.; 1988 Cri. L.J. 558.

6. I have carefully considered the submissions made by the learned counsel for the petitioner and have also gone through the judgments cited. The questions which arise for consideration, in the instant case, are firstly, whether a case for initiation of contempt proceedings against respondent No.1 is made out and secondly, even if it is prima facie made out, whether the petitioner has an alternate efficacious remedy available to her in getting the order implemented, then she must, in the first instance, resort to the same. Moreover, the grievance of the petitioner is essentially for recovery of monies which can be resorted to by filing an execution under Order 21 CPC in the court where the suit is pending adjudication. Reliance in this regard can be placed on the judgment of the Apex Court in Kanwar Singh Saini vs. High Court of Delhi; (2012) 4 SCC 307.

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8. The provisions of Order 39 Rule 2A CPC not only deal with a situation where an injunction order has been passed by the civil court but it also deals and contemplates to deal with a situation where an order passed by the court, of which there is alleged to be willful disobedience, can be dealt with.

9. The only difference between the provisions under Order 39 Rule 2A CPC and the power of the court to punish for contempt under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971, is the quantum of incarceration which a person can be

sentenced to. Under the Contempt of Courts Act, 1971, a person can be sentenced for a period of six months, while under the provisions of Order 39 Rule 2A CPC, he can be sentenced to only three months apart from the fine component under both the provisions. Therefore, one of the remedies which is already available to the petitioner is under Order 39 Rule 2A CPC. She can also seek execution of the order for recovery of monies from respondent No.1 by getting his share in the property in Friends Colony attached or getting his other properties attached and getting recovery effected. Therefore, there is ample mechanism prescribed under the CPC for the purpose of implementation of an order.

10. The contempt power under the Contempt of Courts Act is not only discretionary but is also to be used sparingly. A trend which has been noticed by this court is that parties invariably try to invoke the provisions of the Contempt of Courts Act in order to get orders implemented while there is machinery provided under the CPC for the purpose of getting orders, decrees or directions executed.”

9. In addition to the above, the allegation that the respondent is trying to forcibly evict the petitioner from her home has nowhere been mentioned in the petition.

10. Consequently, the petitioners must seek their relief before the executing court. Accordingly, the present contempt petition is dismissed with liberty to the petitioners to file appropriate legal proceedings in accordance with law.

MANMOHAN, J

JULY 23, 2015

rn/sn