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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CONT.CAS(C) 506/2015

SAROJ ARORA & ORS

..... Petitioners

Through: Ms. Deepika V. Marwaha, Advocate.

versus

MOHINDER PAL & ORS

..... Respondents

Through: None.

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Date of Decision : 3rd July, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM Appl. 11361/2015 (exemption) in Cont.Cas(C) 506/2015

Allowed, subject to just exceptions.

Cont.Cas(C) 506/2015

1. Petitioners allege non-compliance of the order dated 27th April, 2015 passed in FAO 320/2010 and CM(M) 1105/2010 inasmuch as the monthly payments stipulated in the said order have not been paid to the present petitioners.

2. Learned counsel for petitioners also states that even arrears of payments as stipulated in the said order have not been paid. The relevant portion of the order on the basis of which the present contempt petition has been filed is reproduced hereinbelow:-

“45. I accordingly direct that from the date of application till the date of passing of this order, the appellant/plaintiff should be paid Rs.50,000/- per month and from the month April, 2015 onwards, the appellant shall be paid a sum of Rs.75,000/- per month. Since the amount of Rs.20,000/- per month has already been paid by the respondents to the appellant during all this period, therefore, from the date of application till the 31.03.2015, the appellant shall pay the balance amount of Rs.30,000/- per month. This amount shall be paid latest by 31.12.2015 in two instalments.

46. The appellant/petitioner shall give in writing the account number to the respondents for the purpose of depositing the aforesaid amount. The first instalment shall be payable within a period of two months from today and the second instalment within a period of six months from the date of first payment but not later than 31.12.2015. So far as the payment of Rs.75,000/- for April, 2015 onwards is concerned, the same shall be paid on or before 7th of each succeeding English calendar month and in the event of aforesaid not being paid or credited to the account of the appellant/petitioner before 7th of each succeeding English calendar month, the respondent shall be under an obligation to pay a sum of 85,000/- in case the payment is made up to 15th and after 15th a sum of Rs.1,00,000/- per month. This enhancement in the amount has been ordered by this court only to keep a check on the respondents so that payment is made latest by 7th of English calendar month. In case the respondents do not comply with the aforesaid order or dissipate or deal with property in question by any act or conduct which may be detrimental to the interest of the legal heirs of the other partners during the adjudication of the suit, the appellant/petitioner shall be free to file any application

including the application for appointment of a receiver afresh as may be deemed fit.”

(emphasis supplied)

3. In the opinion of this Court, the order referred to hereinabove itself clearly stipulates the consequences for its breach/disobedience. In any event, petitioners are also free to move the civil court under Order 39 Rule 2A CPC or seek execution of the order passed by the Court for recovery of money. However, learned counsel for the petitioners contends that a case of gross contempt is made out as directions of the Court have not been complied with.

4. 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 Bharkat Kumar Rungta vs. Bharkat Kumar 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.”

5. Consequently, as the petitioners have an effective alternative remedy, this Court is of the view that the present contempt petition should not be entertained. Accordingly, present contempt petition is dismissed with liberty to the petitioners file appropriate legal proceedings in accordance with law.

MANMOHAN, J

JULY 03, 2015

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