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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CONT.CAS(C) 1003/2015 & CM APPL. 31127-31128/2015****SOMNATH BHARTI**

Through

..... Petitioner

Mr. Somnath Bharti, petitioner in
person with Ms. Priyanka Kakkar,
Advocate.

versus

BHIM SAIN BASSI & ORS

Through

..... Respondents

None

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Date of Decision : 17th December, 2015**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present petition has been filed under Article 215 of the Constitution of India and Sections 10, 11 & 12 of the Contempt of Courts Act, 1971 on the ground that respondents have violated the order dated 27th October, 2014 passed by the Metropolitan Magistrate inasmuch as no reply to the petitioner's application under Section 173(8) Cr. P.C. has been filed till date even though the time for filing the reply expired on 27th November, 2014.
2. A perusal of the file reveals that after respondent failed to file a reply, the petitioner filed an application under Section 15(2) of the Contempt of Courts Act, 1971 seeking reference of the matter to the High Court.

3. Since petitioner was of the view that learned Metropolitan Magistrate should have passed an immediate order, he challenged the same by way of a revision petition before the Sessions Judge. However, the same has been dismissed by the Sessions Court after observing as under:-

“In this respect, it is found that Ld. Trial Court has made mere observations that the application under Contempt of Courts Act can be entertained by Hon’ble High Court only. But Ld. Trial Court has not decided the said application and in the absence of any proper order, no right accrue to the revisionist to file any revision petition.”

4. Petitioner who appears in the person submits that non-filing of a reply within the time prescribed amounts to contempt of court. In support of his submission, he relies upon a Division Bench judgment of the Patna High Court in ***Awadh Kishore Prasad Singh Vs. State of Bihar and others, 1994 (1) PLJR 335*** wherein it has been held as under:-

“4.....But, instead of doing that, we find here that everybody is making attempt so that extraordinary remedy may become infructuous by causing delay in disposal of cases. In view of these facts, we give following directions to the Chief Secretary, Government of Bihar, all Departmental Secretaries of Government of Bihar and Director General of Police, Bihar, to issue following orders to the officers/staff of their respective departments:-

- (i) to contact respective State counsel appearing in the High Court along with relevant files together with statement of facts within the time enumerated in the letter received from learned counsel for State upon receipt of letter from them so that filing of counter affidavit may not be delayed;*
- (ii) if any officer or staff of the respective department does not comply with the aforesaid directions, then on the matter being reported, the concerned*

Departmental Secretary should initiate a disciplinary proceeding against him and pass an order of suspension of the concerned person when departmental proceeding is under contemplation;
(iii) *the concerned Departmental Secretary should report the matter to this Court about delinquent officer/staff so that this court may initiate a proceeding for contempt against him for violation of this order.”*

5. In the opinion of this Court, just because a reply has not been filed within time, does not constitute civil contempt. In the present case, breach, if any, is of a mere procedural order and every trial court has jurisdiction and inherent power to pass any consequential order on account of non-filing of reply/pleadings in the proceeding pending before it.

6. The judgment relied upon by the petitioner pertains to a situation where the State Government as a matter of regular practice failed to file replies/counter affidavits in nearly all the matters where it was a party. Since, non-filing of replies in a large number of proceedings resulted in the Court not being able to discharge its obligations, the act of non-filing of replies was construed prima facie, as contempt. In the opinion of this Court, non-filing of a reply in an individual case like in the case at hand, cannot be construed as civil contempt.

7. Consequently, this Court is of the view that non-filing of a reply in the present case does not constitute a civil contempt. Accordingly, present contempt petition and applications are dismissed.

MANMOHAN, J

DECEMBER 17, 2015

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