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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 83/2016**
RAM NIWAS TYAGI Petitioner
Through: Mr. Sunil Satyarthi, Adv.

Versus

SUMITRA KAUR & ORS Respondents
Through: Mr. Sanjay Dewan, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.02.2016**

CM No.3448/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. Contempt is averred of the order dated 11th July, 2012 in RFA No.554/2011 pending before this Court restraining the respondents from creating any third party interest in the suit property during the pendency of the appeal.
2. Division Bench of this Court in *Bimal Chandra Sen Vs. Kamla Mathur* 22 (1982) DLT 33 has held that for violation of an order of this nature under Order XXXIX Rule 1&2 of the CPC, as the subject order is, the remedy if any is under Order XXXIX Rule 2A and not by way of a contempt petition under the Contempt of Courts Act, 1971. The same view was reiterated in *Anand Kumar Vs. Haldiram Bhujawala* 146 (2008) DLT

100. The same is the view of Calcutta High Court in *Safal Kumar Mitra Vs. Smt. Chandralekha Mitra* MANU/WB/0210/2014. The contempt petition is thus not maintainable.

3. Moreover, the order only restrains the respondents from creating any third party interest. Though in the petition it is vaguely stated that the respondents have violated the said order but the main grievance is of the respondents having commenced construction and of which there was / is no stay.

4. It is also not explicable as to how the Station House Officer (SHO) of the concerned police station has been impleaded. There was / is no stay against him.

5. Also, the order dated 11th July, 2012 is in the absence of the respondents. It is also not stated as to how the same was communicated to / served on the respondents.

6. Dismissed.

7. The petitioner however if entitled in law shall have liberty to apply under Order XXXIX Rule 2A of the CPC.

No costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 01, 2016

‘gsr’..