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

+ **CONT.CAS(C) 1088/2016 & C.M.No.35829-35830/2016**

VIRENDRA KUMAR Petitioner

Through Mr.Sunil Malhotra, Advocate.

versus

BHARAT BHUSHAN Respondent

Through

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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27.09.2016

Present contempt petition has been filed alleging wilful disobedience of the orders dated 5th June 2006 and 10th March 2016 passed in CS(OS) No.1290/2006, whereby the respondent was restrained from selling, alienating or parting with possession or transferring or creating third party right in respect of the ground floor of property no.J-2/16 Rajouri Garden till the disposal of the suit.

Mr.Sunil Malhotra, learned counsel for the petitioner states though the suit is pending adjudication, yet respondent has entered into an agreement to sell the ground floor of the aforesaid property with Mr. Ajit pal Singh Bindra.

This Court is of the opinion that the petitioner has an alternative effective remedy by filing proceedings under Order 39 Rule 2A, CPC.

A Coordinate Bench of this Court in *Jamna Datwani Vs. Kishin Datwani & Ors. MANU/DE/4122/2014* has 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 Bharatkumar Rungta vs. Bharatkumar 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.”

(emphasise supplied)

Accordingly, the present contempt petition and the applications are dismissed with liberty to the petitioner to file appropriate legal proceedings in accordance with law.

MANMOHAN, J

SEPTEMBER 27, 2016/KA