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

+ **CONT.CAS(C) 1023/2016 & C.M.No.33049/2016**

SONI DAVE

..... Petitioner

Through Mr.Saurabh Prakash, Advocate.

versus

YASIN MIR

..... Respondent

Through

+ **CONT.CAS(C) 1024/2016 & C.M.No.33050/2016**

M/S G S BERAR & CO PVT LTD

..... Petitioner

Through Mr.Saurabh Prakash, Advocate.

versus

YASIN MIR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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08.09.2016

Present contempt petitions have been filed alleging wilful disobedience of judgment dated 18th May, 2016 passed in RFA(OS) No.106/2015 and 107/2015, whereby a Division Bench of this Court had partly allowed the appeal filed by the respondent and had directed the respondent to pay the user charges.

Learned counsel for the petitioners states that the respondent has not paid certain past arrears as well as the user charges from February 2016 onwards.

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However, this Court is of the view that as the Division Bench has passed the said order in a First Appeal, the same is capable of execution under the Code of Civil Procedure.

The Supreme Court in ***Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) SCC 307*** has held as under:-

“26. The case requires to be considered in the light of the aforesaid settled legal proposition. Whatever may be the circumstances, the court decreed the suit vide the judgment and decree dated 12-5-2003. The said decree was passed on the basis of admission/undertaking made by the appellant on 29-4-2003 and the pleadings taken by him in his written statement. Therefore, in a case where there was any disobedience of the said judgment and decree, the application under Order 39 Rule 2-A CPC should not have been entertained. Such an application is maintainable in a case where there is violation of interim injunction passed during the pendency of the suit. In the instant case, no interim order had ever been passed. Thus, the appropriate remedy available to the decree-holder Mohd. Yusuf had been to file application for execution under Order 21 Rule 32 CPC. The procedure in execution of an injunction decree is same as prescribed under Order 39 Rule 2-A i.e. attachment of property and detention of the disobedient to get the execution of the order. In view thereof, all subsequent proceedings were unwarranted.

(emphasis supplied)

In view thereof, present contempt petitions are disposed of with liberty to the petitioners to file execution proceedings in accordance with law.


MANMOHAN, J

SEPTEMBER 08, 2016
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