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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 1073/2016 & CM APPL. 35333/2016

FIROZ KHAN & ORS

Through

..... Petitioners

Mr. Rahul Rajpal with Mr. Naman
Issrani, Advocates

versus

SHOKAT ALI & ORS

Through

..... Respondents

Mr. Siddharth Pandit, Advocate for
R-1.Ms. Mohita, Proxy Counsel for
Mr. Ajay Digpaul, Standing Counsel
for R-2/ SDMC.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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26.09.2016

Present contempt petition has been filed alleging wilful disobedience of the orders dated 19th August, 2016 and 29th August, 2016 passed by a Coordinate Bench of this Court in FAO 298/2016, whereby the respondent was permitted to raise construction on suit property bearing no. WZ-606, Tihar Village, New Delhi in accordance with law.

Learned counsel for the petitioner states that the respondent is carrying out unauthorised construction on the suit property without any sanction plan.

By virtue of doctrine of merger, the injunction order passed by the trial Court shall merge with the aforesaid orders passed by a Coordinate Bench of this Court in FAO 298/2016.

Since the suit is still pending before the trial Court, petitioner has an alternative effective remedy by filing an application under Order 39 Rule 2A CPC. In fact, 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)

Accordingly, present contempt petition and application are disposed of with liberty to the petitioner to file alternative legal proceedings.

Order dasti.

MANMOHAN, J

SEPTEMBER 26, 2016

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