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

+ CONT.CAS(C) 1283/2016 & C.M.No.44992/2016

KHURSHEED BEGUM

(NOW DECEASED) AND ORS

..... Petitioners

Through **Mr.S.D.Ansari with Mr.I.Ahmed,**
Advocates.

versus

NADEEM UR REHMAN & ORS

..... Respondents

Through

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Date of Decision : 06th December, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present contempt petition has been filed alleging wilful disobedience of the order dated 22nd January, 2014 passed in CS(OS) No.185/2014, whereby the Court directed respondent no. 1 to maintain status quo with regard to title and possession of property bearing Private No. 7 in property no. G-6 (Out of Khasra No. 1076/5/2/723 in Village Jhilmil Tahirpur, Dilshad Colony, Extension 1, Shahdara, Delhi.

2. Learned counsel for the petitioners states that despite status quo, respondent no. 1 has parted with the possession of the aforesaid property.

3. A Division Bench of this Court in ***Bimal Chandra Sen Vs. Kamla Mathur; 1982 Law Suit (Del) 152*** has held that the process of contempt

cannot be used to compel performance of a civil obligation. The relevant observation of the Division Bench is reproduced hereinbelow:-

“4. At the very outset the question arises whether such a petition under Sections 10 and 12 of the Act is maintainable in this court on the averments made by the plaintiff. The suit was brought by the plaintiff against the wife of Mr. Mathur. She is the sole defendant in the suit. Against her the injunction order was issued by the subordinate judge under Order 39 rules 1 and 2, Civil Procedure Code enjoining her not to make construction. This was later on modified. No" the plaintiff complains of violation of the injunction order and says that the wife as the principal offender and the husband as an 'aider and abettor' be punished for contempt of court under Sections 10 and 12 of the Act and Article 215 of the Constitution. Will such a petition lie in this Court in respect of an injunction order issued by the subordinate Judge ?

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20. From the above rulings two propositions emerge, Firstly, a person not a party to the suit cannot be proceeded against for contempt for aiding and abetting the breach. Secondly, the jurisdiction to punish for disobedience of the injunction order vests in the court which granted the injunction.

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39. The Code of Civil Procedure does not contemplate this. It expressly provides for grant of injunctions and the punishment for their disobedience. Appeals lie against grant of injunctions. Appeals lie against punishment. Appeals lie against the order to punish or refusing to punish for disobedience. The High Court does not come into the picture at all. It is neither a case of civil contempt nor criminal contempt under the Act. It is a plain case falling within the four corners of Order 39 of the Code of Civil Procedure. To hold that the High Court has power to punish will be to hold that the subordinate judge has the power to grant

injunction, but the High Court has the power to punish for the disobedience of his order under Sections 10 and 12 for civil and criminal contempt because aiding and abetting is alleged.

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43. All that is at stake in the present case is the private rights of the parties. For defiance of the courts under the remedy is provided in the Code. It is attachment and detention in civil prison. For deliberate defiance of interim injunctions the court can send the contemner to prison. If the subordinate courts cannot enforce their injunctions the order virtually would be worthless. It is the deterrent effect of an injunction plus the liability to imprisonment for its breach which is the remedy. The subordinate judge can punish the defendant if he finds her to be guilty in flagrantly defying the order which he had made. Contumacious disregard and contemptuous disobedience if the orders of the court have always been visited with committal to prison and attachment. Against the husband no case of criminal contempt has been made out. It seems to me that the application is wholly misconceived.

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48. In India the position is different. In this country the authoritative decision is of the Privy Council in S. N. Banerjee v. Kuchwar Lime & Stone Co. Ltd (supra). The Privy Council has held that disobedience of the breach of injunction is a civil contempt governed by the Code of Civil Procedure. For their decision they relied on Scott v. Scott (supra). The Patna High Court had relied on Seaward v. Paterson. Reversing the High Court the Privy Council held that Seaward v. Paterson did not apply to the case before them. I would say the same. Seaward v. Paterson does not apply to the present case. This is a straight forward case of an injunction granted by the subordinate judge and the plaintiff alleging its disobedience by the defendant and her husband. The answer is : "Go to the court which issued the injunction".

4. A Coordinate Bench of this Court in ***Jamna Datwani vs. Kishin Datwani & Ors., Cont.Cas.(C) 652/2014*** 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.”

5. Recently, 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.”

6. Consequently, the present contempt petition is dismissed with liberty to the petitioners to file an application under Order 39 Rule 2A, CPC.

7. However, this Court clarifies that it has not made any observations with regard to the merits of the petition. The rights and contentions of all the parties are left open.

DECEMBER 06, 2016
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MANMOHAN, J