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

+ **CONT.CAS(C) 1332/2016**

GYANENDER KUMAR SHARMA

..... Petitioner

Through Mr.K.K.Agrawal with Ms.Parul
Singh, Advocates.

versus

MANJU SHARMA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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19.12.2016

Present contempt petition has been filed alleging wilful disobedience of the order dated 2nd February, 2015 passed in CS(OS) No.1411/2013, whereby the Suit for partition, possession and permanent injunction was disposed of in terms of the settlement agreement dated 14th July, 2015 and the parties were held bound the same.

It has been averred in the petition that vide Settlement Agreement dated 14th July, 2015 the parties agreed to distribute the property bearing no. 20A, admeasuring 100 sq. yrd., D Block, Dabri Extension, New Delhi in the ratio of 50:50. It was further agreed that both the parties will sell the property by joint efforts and the sale proceeds received shall be shared by both the parties in equal proportion. The parties further undertook to sign and execute proper documents of sale and transfer as and when a buyer is found and the

deal is struck.

Learned counsel for the petitioner states that respondent is not making any effort to sell the aforesaid property inasmuch as vide her notice dated 9th September, 2016, the respondent has asked for division of the property by metes and bounds.

In the opinion of this Court, since the suit has been disposed of in terms of the settlement agreement dated 14th July, 2015, the petitioner has an alternative effective remedy by filing an execution proceeding or revive the aforesaid suit.

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

“16. Be that as it may, the so-called statement/undertaking given by the appellant-defendant culminated into the decree of the civil court dated 12-5-2003. Thus, the question does arise as to whether the application under Order 39 Rule 2-A CPC or under the 1971 Act could be entertained by the civil court and whether the matter could be referred to the High Court at all.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

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.”

Consequently, the present contempt petition is dismissed with liberty to the petitioner to file an alternative effective remedy in accordance with law.

MANMOHAN, J

DECEMBER 19, 2016

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