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

+ **CONT.CAS(C) 1343/2016**

QUDDUS ANSARI Petitioner
Through: Mr. Rameez Siddique, Advocate.

versus

AMAR SINGH Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER

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19.12.2016

CM Appl. 46738/2016 (exemption) in Cont.Cas(C) 1343/2016

Allowed, subject to just exceptions.

Cont.Cas(C) 1343/2016

Present contempt petition has been filed alleging wilful disobedience of the decree and order dated 22nd August, 2016 passed in CS(OS) 1446/2013 whereby the suit was decreed and respondent undertook that the three cheques aggregating to Rs.35 lacs will be honoured on presentation.

Learned counsel for petitioner states that cheque dated 20th September, 2016 for Rs.5 lacs and cheque dated 02nd November, 2016 for Rs.12,50,000/- have been dishonoured. He further states that only Rs.4 lacs out of the total settlement amount of Rs.35 lacs has been paid to the petitioner.

However, this Court is of the opinion that as the decree is executable, petitioner has an alternative effective remedy. 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.

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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 execution proceedings.

MANMOHAN, J

DECEMBER 19, 2016

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