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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 33/2017 & CM 1766/2017

GLOBAL HOLDING CORPORATION
PRIVATE LIMITED

..... Petitioner

Through: Mr. Rajiv Nayar, Senior Advocate with
Ms. Shyel Trehan and Ms. Himanie
Katoch, Advocates.

versus

SYNDICATE BANK & ORS

..... Respondents

Through: Ms. Anju Jain, Advocate with
Mr. Hitesh Sachar, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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16.01.2017

Present contempt petition has been filed alleging wilful disobedience of the order dated 18th November, 2016 passed by a Coordinate Bench of this Court in CS(COMM.) No.1459/2016 wherein the learned counsel for respondents made a statement that respondents had filed an application seeking permission of the Debt Recovery Tribunal to sell the shares pledged by the petitioner and the same shall be dealt with subject to the orders that may be passed by the Debt Recovery Tribunal.

Mr. Rajiv Nayar, learned senior counsel for petitioner states that despite the aforesaid order, respondents have transferred 10 crore shares of CNIL (Chennai Network Infrastructure Ltd.) pledged by the petitioner with

the respondents into its own DEMAT account without obtaining the appropriate orders/permission from the Debt Recovery Tribunal.

The Supreme Court in ***Kanwar Singh Saini Vs. High Court of Delhi (2012) 4 SCC 307*** in a case where the statement of the parties was recorded and the suit disposed of, has held that in such circumstances normally execution proceedings should be filed. The relevant portion of the said judgment is reproduced hereinbelow:-

“ 15 xxxx xxxx xxxx

Thereafter the learned Judge passed the following order:-

“12-5-2003

Present : The plaintiff in person.

The learned counsel for the defendant.

The statement of the plaintiff is recorded on a separate sheet. Statement of the defendant is already recorded. Keeping in view the statements of parties, the suit of the plaintiff is disposed of. Parties are bound by their statements as given in the court. No orders as to costs. File be consigned to record room.

*sd/-
CJ/Delhi
12-5-2003”*

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.”

(emphasis supplied)

In view of the aforesaid judgment, present contempt petition and application are disposed of with liberty to the petitioner to file execution proceedings.

Order dasti under the signature of Court Master.

MANMOHAN, J

JANUARY 16, 2017

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