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

+ **CONT.CAS(C) 105/2017 & C.M.Nos.4615-4616/2017**

BHAGWATI DEVI

..... Petitioner

Through Ms.Deepika, Advocate.

versus

SURENDER KUMAR JAIN

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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06.02.2017

Present contempt petition has been filed alleging wilful disobedience of the Settlement Agreement dated 6th January, 2012 executed between the parties in Execution Petition No.231/2009 in CS (OS) No.1256/2003 wherein the respondent agreed to construct the first and the second floors of the property bearing no. MP 109, Maurya Enclave, Pitam Pura, Delhi as per the terms of the agreement. It was further agreed between the parties that the said construction would be completed within twenty four months from the date of said agreement.

Learned counsel for the petitioner states that respondent has not completed the construction till date.

In the opinion of this Court, the petitioner has an alternative effective remedy by either reviving the old execution petition or by filing a fresh execution petition.

The Supreme Court in ***Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) SCC 307*** in a similar situation 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)

In view thereof, present contempt petition is disposed of with liberty to the petitioner to file the execution proceedings.

MANMOHAN, J

**FEBRUARY 06, 2017
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